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William Geiger. (To accompany bill H.R.C.C. no. 96.)

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WILLIAM GEIGER.

[To accompany bill H. R. C. C. No. 96.]

FEBRUARY 11, 1860.—The Court of Claims submitted the following report, which, together with the accompanying bill, was referred to the Committee of Claims.

MARCH 1, 1860.—Ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled :

The Court of Claims respectfully presents the following documents as the report in the case of

WILLIAM GEIGER *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Documentary evidence offered by the claimant, transmitted to the House of Representatives.
3. Evidence offered by the government, transmitted to the House of Representatives.
4. Claimant's brief.
5. United States deputy solicitor's brief.
6. Opinion of the court.
7. Bill allowing claimant \$4,010 62.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this fifth day of December,
[L. S.] A. D. 1859.

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

No. 1.

COURT OF CLAIMS.

WILLIAM GEIGER vs. UNITED STATES.

To the honorable the Judges of the Court of Claims :

The petition of William Geiger, of the city of Fort Smith, in the county of Sebastian and State of Arkansas, respectfully represents : that on the 18th day of October, A. D. 1854, a contract was made and entered into by and between Captain S. G. French, assistant quartermaster United States army, on behalf of the United States, of the one part, and your petitioner of the second part, a copy of which contract is hereto annexed, by which said contract the said Captain S. G. French, on behalf of the United States, bound himself to pay unto the said Geiger a certain price for the performance of certain work as a stone mason ; and by which said contract the said Geiger bound himself, under certain penalties, to do and perform said work in a good and workmanlike manner, and within a certain specified time, in the erection of a stone barrack at Fort Washita, in the Choctaw nation ; and in the quarrying of rock and burning of lime, to be used in the construction of said military barrack ; all of which will more fully and at large appear by reference to the copy of the articles of agreement aforesaid, hereunto annexed.

That your petitioner did at once proceed to Fort Washita, and with his employés, hired and brought with him from Arkansas, commenced said work in compliance with his said contract.

That your petitioner was compelled to hire hands at most enormous rates of wages, in order to fill his said contract.

That after the work had progressed some way, he and his workmen were compelled to cease working in consequence of a lack of material to be used in other departments of said building, and which of necessity should progress in proportion to his work ; and during such time his men idle, your petitioner was compelled to pay said men full wages for doing nothing, while and he they were ready waiting and willing to be at work, in order to complète said contract within the said specified time, and were prevented for the cause above stated.

That Fort Washita being in the Indian country where no mechanics can be found, and distant from the place of residence of your petitioner nearly two hundred miles, he was compelled to employ workmen in the State and keep them under wages, and could not discharge them, as others could not be found ; and that while at Fort Washita your petitioner was under enormous expenses in the subsistence of himself and his men, having to pay two prices for almost every thing he needed ; and that your petitioner from repeated delays in the furnishing of material for other parts of the building than that which demanded his attention as per contract, was compelled to return to his home with fourteen men under wages, three several times, which involved your petitioner deeply in debt, and almost destroyed his credit and his business.

That during the progress of said building your petitioner, in order to complete his contract, was compelled to borrow money and at a most exorbitant rate of interest.

That in consequence of the detention by the non-arrival of material which was to have been furnished by the United States, in order that the several departments of said building might be in progress at the same time, as your petitioner's part could not possibly be performed, only in proportion as the carpenters proceeded with their part, and with which your petitioner had nothing whatever to do, your petitioner has been materially damaged.

That your petitioner finally completed the building on the — day of November, A. D. 1856, and that he has not yet been fully paid therefor.

That after the completion of said building it was received and approved by the acting quartermaster at Fort Washita, and that before your petitioner could receive any part of his pay, he was compelled to leave his family, his home, and his business, and go to Fort Washita three times, in hope of being paid, and had to remain there, under very heavy expenses, over a month at a time.

That your petitioner is aware that the privations and inconveniences above set forth, in the "States" would be of minor importance, but situated as he was, in an Indian country, where provisions of every kind are sold at very high prices, and where, had he discharged his men when idle, he could not have replaced them at any price per day; they were difficulties almost insurmountable, and ones too which have almost entirely ruined petitioner's business and placed him and his affairs in such a position that the whole amount due for said work so done and performed according to contract, and received and approved by the proper officer whose duty it was so to do, when paid to your petitioner, will not be sufficient to clear him of the liabilities contracted by him in the consideration of the same.

And that your petitioner earnestly prays that this honorable court, in view and in consideration of the above and foregoing facts, will consider his case, cause an investigation to be had, and allow unto your said petitioner a sum of money sufficient to satisfy all the damages he has sustained by reason of the causes hereinbefore stated, which sum should not be less than ten thousand dollars, in addition to what he has already been paid.

Your petitioner will add that he is the sole owner of this claim, and refers to the act establishing this court, as conferring full jurisdiction in the class of cases to which it belongs.

WILLIAM GEIGER.

JOHN M. McCALLA,
Attorney for claimant.

[A true copy.]

Articles of agreement made this 18th day of October, 1854, between Captain S. G. French, assistant quartermaster United States army, on behalf of the United States of the one part, and William Geiger, of the city of Fort Smith, Arkansas, of the second part. This

agreement witnesseth: That the said Captain S. G. French, assistant quartermaster United States army, for and on behalf of the United States of America, and William Geiger, for himself, his heirs, executors, and administrators, have mutually agreed, and by these presents do mutually covenant and agree to and with each other (by the approval of the quartermaster general) in the following manner, viz :

1st. That the said William Geiger shall proceed from this place to Fort Washita, Choctaw nation, and there, under the direction of Major George J. Andrews, acting assistant quartermaster, or such person as shall be performing the duties of quartermaster at the fort, proceed to quarry stone, burn lime, lay the foundation, and erect a stone barrack of such dimensions as may be directed, and in the following manner: The walls of the basement story to be two feet in thickness, the principal story to be one and a half feet in thickness, the whole to be rough cast on the outside, and finished by "floating" twice; the inside to be of the customary evenness for plastering; the whole to be done in a good substantial workmanlike style, including the chimneys as specified or may be directed; the windows and doors to be arched with *furnished brick*, with sills of dressed stone of hard and substantial kind.

2d. It is further agreed and understood that the said Geiger quarry all the stone and burn all the lime he may require, at his own expense, on or near the military reserve of the garrison, or, in other words, he shall furnish all the material and erect the walls and chimneys for the consideration hereinafter mentioned.

3d. It is agreed that the said Captain S. G. French, assistant quartermaster, shall pay, or cause to be paid, for the furnishing of materials, erecting and finishing the walls and chimneys, unto the said William Geiger, or his heirs, executors, &c., for each perch of sixteen and a half cubic feet, as measured in the walls and projecting chimneys, the sum of three dollars and twenty-four cents, windows and doors included in the measurement.

4th. The bricks for arching the windows and doors to be furnished by the United States; but for the windows and door-sills of hard dressed stone said Geiger is to be paid seventy-five cents per superficial foot so dressed.

5th. For furnishing the lime and plastering the walls and ceilings inside, said Geiger shall be paid thirty-five cents per yard, it being understood that the plastering shall be two coats, walls floated and finished, white, but not "hard finished" by trowelling.

Now the condition of this obligation is such, that if the said William Geiger, his heirs, &c, shall well and truly, and without fail, erect and finish the said walls and chimneys, (except the plastering inside,) on or before the 30th day of June, 1855, he shall be paid as specified, and this obligation to be void, but otherwise to remain in force to the effect of the said Geiger forever forfeiting to the United States one-third of all money due him on account of said building and materials, which said third amount due shall be retained in the hands of the

superintending quartermaster until the entire work is completed as specified.

S. G. FRENCH,
Captain and Assistant Quartermaster.
WILLIAM GEIGER.

Sealed and delivered in the presence of—

S. M. WILLARD.

CHARLES WRIGHT.

To remove any doubts in the construction of the above contract, it is here stated that the distinct understanding of the parties to the contract was that the said Geiger was to furnish, at his own expense, stone properly quarried on the ground near the garrison; that he was to furnish the lime at the kilns, burned at his own expense, and that the quartermaster's department was to haul the stone, the lime, the sand, &c., to the site of the building, in other words, said Geiger was not required to haul any of the materials required in the construction of the building from the places of preparation to the site of the building.

S. G. FRENCH,
Captain and Assistant Quartermaster.
WILLIAM GEIGER.

Additional agreements made November 1, 1854:

1st. The undersigned agree that the acting assistant quartermaster at Fort Washita shall pay William Geiger twenty-five cents per perch for loading the wagons when the public teams haul the stone from the quarry.

2d. The acting assistant quartermaster will give provision returns for William Geiger's laborers not exceeding ten rations per diem, and the value of said rations, as stated by the assistant commissary of subsistence, shall be deducted and credited the United States on every settlement.

WILLIAM GEIGER.
GEORGE P. ANDREWS,
Brevet Major and First Lieutenant 3d artillery, A. Q.

DISTRICT OF COLUMBIA, }
Washington County, } ss:

Personally appeared before me, a justice of the peace in and for said county, the above-named John M. McCalla, who made oath that the facts set forth in the foregoing petition are true to the best of his knowledge and belief.

Given under my hand this nineteenth day of October, 1857.

H. HAYDEN,
Justice of the Peace.

Particulars of Claim.

THE UNITED STATES TO WILLIAM GEIGER, DR.

To amount paid thirteen workmen for five months idle, at Fort Washita and Fort Smith, during the progress of work, and while delayed by the failure of the government to fill her contract with Geiger; five of said men at \$65 per month, and eight of said men at \$39 per month, is.....	\$3,185 00
To amount paid the same number of workmen idle, from the same cause, at the same rates, during three several trips to and from Fort Washita and Fort Smith, while waiting for work, (say for three months;) and for cost of transportation, three times each way, of said men; each trip twenty to twenty-five days, at \$260 each trip in and out, is.....	\$2,691 00
To amount of interest paid by me on borrowed money, to carry on said work, when government should have paid me, say.....	450 00
To amount of expenses of myself in going to and returning from Fort Washita seven trips; and while waiting at Fort Washita for my money, after the completion of said work; at one trip, \$100; one other trip, \$30; and five trips, at \$20 each, is.....	230 00
To loss of and to my business while waiting on the government to fill her contract, and to pay for work when finished, causing me great delay, and preventing me from doing other work offered me during said time, say.....	1,000 00
To amount of loss sustained to my credit, by being unable to meet my liabilities, and pay money when promised that I borrowed, and by being unable to pay my men according to contract as work progressed, all caused by the government failing to discharge her part of said contract. Can make no estimate.	
To amount for board of self and thirteen workmen, while idle, from causes above set forth, fourteen men for five months, at \$25 per month per man.....	1,750 00
	<hr/>
	\$9,306 00
	<hr/>

To this might be added several other items of loss and damage by me sustained, from above and foregoing causes, but wishing for nothing but to be compensated for actual loss, on account of and caused by the neglect of government; and, believing that said amount of \$9,306 will cover it, I ask no more.

WM. GEIGER.

STATE OF ARKANSAS, *County of Sebastian, ss:*

I, William Geiger, of Fort Smith, Arkansas, do solemnly swear that the above and foregoing account, against the United States, for loss and damage by me sustained by reason of the government failing to fulfil her part of a certain contract between the United States and me, the said Geiger, relative to the erection of a military barrack at Fort Washita, and by reason of the United States failing to pay me for said work when completed is just and true; that the work on said barrack was done, performed, and completed by me; and that each of the foregoing items for loss and damage is as nearly correct and true as I can or could make it; and that I am actually the loser of, and damaged in, the sum of nine thousand, three hundred and six dollars, by reason of said failures and delays by the United States as aforesaid; and that a sum less than this will not fully compensate me for the loss and damage sustained by me thereby, to say nothing of how much and to what extent my credit has been injured in this matter; so help me God.

WM. GEIGER.

Sworn to and subscribed before me, an acting justice of the peace, duly commissioned and qualified, in and for said county and State, by William Geiger, who to me is personally well known, this 7th day of April, A. D. 1858.

J. H. SPARKS,
Justice of the Peace.

Interrogatories to claimant's witnesses.

SIR: I propose to take the depositions of Thomas Vernon, Benjamin F. Atkinson, Joseph Knobel, Jacob Ziegenbein, John C. Atkinson, Rev. Mr. Burk, and George P. Andrews and others, at Fort Smith city, and at Fort Washita, on the enclosed interrogatories, at such time as the claimant and the commissioner may agree on, to be read as evidence in the claim now pending before the said Court of Claims, in which I request your concurrence.

Respectfully, your obedient servant,

JOHN M. McCALLA,
Attorney for Claimant.

Solicitor of Court of Claims.

The above proposition is assented to, and cross-interrogatories added.

J. D. McPHERSON,
Deputy Solicitor.

OCTOBER 20, 1859.

IN THE COURT OF CLAIMS.

WILLIAM GEIGER *vs.* UNITED STATES.*Interrogatories on part of claimant.*

1. Are you acquainted with William Geiger, of Fort Smith city, Arkansas, and, if so, do you know of his having erected a barrack at Fort Washita, in the Choctaw nation?

2. How many workmen did he have employed in said work, and what were their wages per day, and expenses of supporting them while employed, or while waiting for work?

3. Was or was not said Geiger compelled to suspend his part of the work from failure of the government to cause the remainder of the work to be done by the carpenter in time for said Geiger; and, if so, how long and how often was he so delayed?

4. Did he or not return to Fort Smith with his workmen during the progress of said work; and, if so, state how often, and from what cause?

5. What is the distance between Fort Smith and Fort Washita, and what is the usual expense of travel from one to the other?

6. What were the expenses for subsistence at Fort Washita, between October, 1854, and November, 1856, either by purchasing supplies and furnishing one's self, or by boarding?

7. Do you know of any damage sustained by said Geiger in consequence of said delays, either in his business or by borrowing money, or any other way? If so, state it particularly.

8. Do you know of the work being finally completed and received by the proper officer at Fort Washita, and did or not said Geiger fail to receive pay for the same until he had been obliged to travel several times to said fort; and, if so, how often and how long was he delayed at said fort, and at what expense?

9. Was it or not impossible to procure workmen at Fort Washita, suitable for said Geiger's contract, and was he or not compelled, in consequence, to keep his men on pay and expenses even while idle, in consequence of the delay of government?

JOHN M. McCALLA,
Attorney for Claimant.

Cross-interrogatories.

1. Recur to your answer to the third interrogatory, and state expressly and particularly in what respects the government officers failed to do what was necessary on their part to enable Geiger to proceed with his work; what carpenter's work was to be done and was not done in time?

2. Recur to your answer to the seventh interrogatory, and state fully the data upon which you found your estimate of damage sustained by Mr. Geiger.

3. In what manner did you acquire the information you have given in your answers? From the workmen employed by Mr. Geiger; from

Mr. Geiger, or in other ways; distinguishing the information received from these sources?

J. D. McPHERSON,
Deputy Solicitor.

Deposition of B. F. Atkinson.

Depositions of witnesses taken and subscribed before me, C. C. Benton, clerk of the circuit court of the county of Sebastian, in the State of Arkansas, on the 23d day of January, A. D. 1858, and following days, between the hours of 9 o'clock a. m. and 4 o'clock p. m. of said days, at the law office of James H. Sparks, in the city of Fort Smith, county and State aforesaid, in pursuance of an order of the United States Court of Claims for me to act as commissioner, and to be read as evidence in a certain cause now pending in the said court at Washington city, D. C., wherein William Geiger is claimant and the United States defendant; on the part of the claimant, Benj. F. Atkinson, a witness to me known to be of lawful age, being to me, at the time and place aforesaid, produced, and being by me duly sworn to tell the truth, the whole truth, and nothing but the truth, relative to the cause aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

I, Benj. F. Atkinson, tinner, aged twenty-one years, have resided in the city of Fort Smith, county of Sebastian, State of Arkansas, during the past year; have not any interest, direct or indirect, in the claim which is the subject of inquiry between William Geiger and the United States; and that I am not, in any degree whatever, related to the claimant.

And to the first interrogatory, marked "1," hereunto annexed, he answers: That he is acquainted with William Geiger, of Fort Smith city, State of Arkansas; that he knows of his having erected a barrack at Fort Washita, in the Chickasaw nation, for the United States.

To the second interrogatory, marked "2," hereunto annexed, he answers: That the said Geiger had in his employment, in the erection of said barrack, at Fort Washita, thirteen men; and that their wages per day was two dollars each; and that the expense of supporting each man, while employed, or while unemployed waiting for work, was from twenty-five to thirty dollars per month.

To the third interrogatory, marked "3," hereunto annexed, he answers: That the said Geiger was compelled to suspend his part of the work from failure of the government to cause the remainder of the said work to be done by the carpenters in time for the said Geiger, the first of which time he was delayed a few days over one month, and the other of which time he was delayed between nine and ten weeks.

To the fourth interrogatory, marked "4," hereunto annexed, he answers: That the said Geiger did return to Fort Smith with all his workmen, during the progress of said work, three several times; and that the cause of said Geiger's returning to Fort Smith during the progress of said work were, at one time, the failure of the government

to have the carpenter's work on said barrack progress sufficiently far, and in sufficient time, for him, the said Geiger, to proceed with his part of the work, and at the other times a failure of the government to haul rock required by the said Geiger in the construction of said barrack; and that one other cause for said Geiger's returning to Fort Smith while thus delayed was, that he, the said Geiger, was compelled to procure means with which to pay his workmen, as he could not procure the same at Fort Washita.

To the fifth interrogatory, marked "5," hereto annexed, he answers: That the distance between Fort Smith and Fort Washita is one hundred and eighty miles; and that the usual expense of travel from one place to the other is from one dollar and a half to two dollars per day, for man and horse.

To the sixth interrogatory, marked "6," hereto annexed, he answers: That the expense of subsistence at Fort Washita, between October, A. D. 1854, and November, 1856, either by purchasing supplies and furnishing one's self or by boarding, were from twenty-five to thirty dollars per month per man.

To the seventh interrogatory, marked "7," hereto annexed, he answers: That said Geiger did sustain great damage in consequence of said delays, not only to his reputation; in this he was damaged in a pecuniary point of view while thus delayed, whereas he could be profitably employed elsewhere during the time of said delays, but was compelled to await the movements of government in this matter. And by being employed elsewhere, he, the said Geiger, could have his men working while receiving pay, (as he knows that the said Geiger could have been employed were it not for his engagement with the government,) instead of being compelled to pay them for doing nothing, and that he, the said Geiger, was damaged in his reputation, in this—that the said Geiger, in order to wait the demands of his workmen and pay them their accruing wages, was compelled to borrow four thousand dollars, for which he had to pay twelve per cent. per annum. That the said Geiger borrowed said money on the faith and strength of his contract with the government; and that he was unable to pay the same according to his promises, by reason of the government having failed to provide for the performance of his part of the work, and in the failure of the government to pay said Geiger when said work was completed and received.

To the eighth interrogatory, marked "8," hereto annexed, he answers: That he knows said work was finally completed; and of its having been received by Capt. Lendrum, at Fort Washita; and that said Geiger did not receive pay in full for the same until after he was obliged to travel two different times to Fort Washita in order to obtain the same. That the said Geiger was delayed at one time at said Fort 42 days, while waiting to receive his pay for said work so completed; and at the other time he was delayed at said fort while waiting for his pay 14 days, each time at an expense of from one dollar and a-half to two dollars per day; and that said Geiger, at one time after the completion of said work, and before being paid for the same, sent a messenger to Fort Washita to receive his said pay, at an expense of one dollar per day besides subsistence.

And in answer to the ninth interrogatory, marked "9," hereto annexed, he answers: That it was impossible to procure workmen at Fort Washita suitable for said Geiger's contract; and that he was compelled in consequence to hire his workmen in the States, and keep them on pay and expenses as well when idle, in consequence of the delays of government, as when at work.

And at the same time and place, the said Benjamin F. Atkinson, on his oath aforesaid, in answer to the first cross-interrogatory, marked "1," hereto annexed, answers: That the government officers did fail on their part to furnish material for the carpenters to proceed with their work, and that, by the said carpenter's work being unprepared, Geiger was of necessity compelled to suspend operations on his part and wait the movement of government to furnish material. That the government officers also failed to haul rock and deliver it at the site of the said building as per contract, in order that Geiger and his men might proceed with their work; and that the government officers did fail to fulfil the contract on their part by not paying to said Geiger some money as the work progressed. The carpenter's work to be done, and which was not done, was the laying of sleepers for the upper and lower floors of said building.

To the second cross-interrogatory, marked "2," hereto annexed, he answers: That the data upon which he founded the estimate of damage sustained by said Geiger, are founded upon actual observation, having had a thorough knowledge of the said contract, and of the manner in which the work progressed, and being acquainted with said Geiger and his business.

And to the third cross-interrogatory, marked "3," hereto annexed, he answers: That the manner in which he acquired the information he has given in his answers, was from being an eye witness of nearly every transaction in connexion with said building; being a workman on said building as tinner, not in the employment nor in connexion with said Geiger, and from a thorough knowledge of the many privations and disadvantages to which said Geiger was exposed in endeavoring to procure workmen in the States, in his almost total disability to pacify and reconcile his men while at Fort Washita a part of the time unemployed, he, the said Geiger, having no means wherewith to pay his said men the wages then due and accruing to them, said Geiger being one hundred and eighty miles from a point at which he might have procured funds to have done so. That he also acquired some information of the damages sustained by Geiger from some of the workmen employed by him, having heard some of them manifest the greatest dissatisfaction towards, and complain loudly of, said Geiger, for the manner in which he treated them by not paying them their wages when due, and by keeping them unemployed at Fort Washita, fearing lest they would not be paid for their time. And that he received some from Mr. Geiger himself, whom he has frequently heard say long before he was aware that Mr. Geiger had this claim pending, that he would not undertake such a job again for ten thousand dollars more than the amount to be paid for it, and that most of his information was obtained from being an

eye witness of the affair; and that he knows of nothing more. Further this deponent saith not.

BENJ. F. ATKINSON.

Deposition of D. P. Hancock.

And at the same time and place, before me also appeared Lieutenant D. P. Hancock, a witness known to me to be of lawful age, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in reference to the claim aforesaid, deposed as follows :

I, D. P. Hancock, lieutenant, and acting assistant quartermaster United States army, aged twenty-four years, have resided at Fort Washita in the Choctaw nation during the past year; have no interest, direct or indirect, in the claim which is the subject of inquiry; and am not related in any manner whatever to the claimant; and in answer to the first interrogatory, marked "1," hereto annexed, answers, that he is acquainted with William Geiger, of the city of Fort Smith; and that he knows of said Geiger having erected a stone barrack for the United States at Fort Washita, in the Choctaw nation, some time between the years 1854 and 1857; and to the second interrogatory, marked "2," hereto annexed, answers, that he has no definite knowledge; and in answer to the third interrogatory, marked "3," hereto annexed, answers, that he cannot say; and in answer to the fifth interrogatory, marked "5," hereto annexed, answers, that the distance between Fort Smith, Arkansas, and Fort Washita, in the Choctaw nation, is about 170 miles, and that the expenses of travel between said points is about one dollar per day; and in answer to the eighth interrogatory, marked "8," hereto annexed, he answers, that he knows of the final completion of the work, and never heard any objections urged by the proper officer, whose duty it was to have received it, against the work; and is satisfied it was received and approved; and that he knows that said Geiger did not receive pay for said work when completed, as per contract, as the work was completed when the quarters were turned over to him, said Lieutenant D. P. Hancock, acting assistant quartermaster, United States army, in December, A. D. 1856, and said Geiger did not receive his pay for said work for nearly six months afterwards; and that said Geiger was compelled to come to said Fort Washita, from his home, several times, in order to obtain his money; does not know how often, but knows that he came several times; and in answer to the ninth interrogatory, marked "9," hereto annexed, he answers, that he is satisfied that then, as now, it was impossible to procure workmen at Fort Washita, suitable for said Geiger's contract; and is satisfied that he must have been compelled to procure men elsewhere in order to fill his contract; and in answer to the third cross-interrogatory, marked "3," hereto annexed, he answers, that the information given in his answers was acquired from actual observation, and that he knows that said Geiger performed said work as the contract for said work between the United States and said Geiger was turned over to him in his official capacity,

and that he afterwards paid said Geiger for said work ; and that he knows of nothing more. Further this deponent saith not.

D. P. HANCOCK,

Second Lieutenant Seventh Infantry.

Deposition of Thomas Vernon.

And at the same time and place, before me also appeared Thomas Vernon, a witness known to me to be of lawful age, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the claim aforesaid, deposed as follows :

I, Thomas Vernon, architect, aged forty-five years, have resided in Fort Smith, Sebastian county, State of Arkansas, during the past year, and ever since the year 1851 ; have no interest, direct or indirect, in the claim which is the subject of inquiry ; and am not in any matter whatever related to the claimant ; and in answer to the first interrogatory, marked " 1," hereto annexed, he answers, that he is well acquainted with William Geiger, of the city of Fort Smith, Arkansas ; has known him for nearly six years ; that said Geiger did erect a barrack for the United States, at Fort Washita, in the Choctaw nation ; that he was in charge of said building, as architect, and that he drafted the plan for said building ; in answer to the second interrogatory, marked " 2," hereto annexed, he answers, that said Geiger had thirteen men employed on said barrack, at the expense of two dollars per day, wages ; and that the expenses for boarding each man per month was from twenty to twenty-five dollars, while employed or unemployed waiting for work ; in answer to the third interrogatory, marked " 3," hereto annexed, he answers, that said Geiger was compelled to suspend operations, on his part, from failure of the government to cause the work to be prepared for him, said Geiger, from failure of the government to haul rock and lime, as per contract, for said Geiger to proceed with his work, and from the delay caused by the government not causing the carpenters' work to progress sufficiently fast for the stone work to be continued ; said Geiger was thus compelled to suspend operations some four times ; one time about two days, one other time about two months, one other time about six weeks, and one other time about three or four months ; in answer to the fourth interrogatory, marked " 4," hereto annexed, he answers, that said Geiger did return to Fort Smith with his workmen during the progress of said work ; that Geiger and his men returned to Fort Smith two several times ; and that the cause of his leaving Fort Washita and returning home during the progress of said work was a failure on the part of the government to furnish material and deliver it at the site of building, as per contract, in time to have other parts of the work progress sufficiently far and sufficiently fast to enable said Geiger to proceed with his part ; and a failure on the part of the government to furnish and deliver in time material required in said Geiger's part of said work ; and in answer to the fifth interrogatory, marked " 5," hereto annexed, he answers, that the distance between Fort Smith and Fort Washita is one hundred and eighty miles, and

that the expense of travel from one to the other is at least two dollars per day for man and horse.

In answer to the sixth interrogatory, marked "6," hereto annexed, he answers: That the expense of subsistence at Fort Washita, between October, 1854, and November, 1856, was by boarding, say fifteen dollars per month per man, and by purchasing supplies and furnishing one's self, from fifteen to twenty-five dollars per month per man.

In answer to the seventh interrogatory, marked "7," hereto annexed, he answers: That he knows of said Geiger being damaged in his business and in his reputation by said delays in his business; by being compelled to borrow money, at enormous rates of interests, to pay his men for doing nothing as well as when at work; by discounting quartermaster drafts ten per cent. for cash, wherewith to be enabled to carry out his contract; and in his reputation by not being able to pay the money borrowed at the time promised, in consequence of the government failing to pay him, said Geiger, as the work progressed; and by the government failing to pay said Geiger when said work was completed, received, and approved.

In answer to the eighth interrogatory, marked "8," hereto annexed, he answers: That he knows that said work was finally completed by said Geiger, and received by the proper officer; and that said Geiger failed to receive pay for said work until he was compelled to travel to Fort Washita several times for it; one time he waited there about six weeks, at an expense of at least two dollars per day, to say nothing of time and absence from business.

And in answer to the ninth interrogatory, marked "9," hereto annexed, he answers: That it was impossible to procure workmen at Fort Washita suitable for said Geiger's contract, and that said Geiger was in consequence compelled to keep his men in pay and expenses even while idle, in consequence of the delays of government, as well as when at work; for had he discharged said workmen, while compelled, by the failure of government to perform their part of the contract, to suspend operations, he could not, at any point within one hundred and fifty or two hundred miles, at any price, be able to procure men suitable for his contract.

And in answer to the first cross-interrogatory, marked "1," hereto annexed, he answers: That the government officers failed to do what was necessary on their part to enable said Geiger to proceed with his work, in this: that they failed to furnish, haul, and deliver at the site of building, material, rock, lime, and brick, so that said Geiger could proceed with his work; that the carpenters' work, which was to be done, and was not done in time, so that Geiger's work might go on without delay, was the failure to have in place in time a tier of joists on the second floor.

In answer to the second cross-interrogatory, hereto annexed, marked "2," he answers: That the data upon which he finds the estimate of damages sustained by said Geiger is derived from a thorough knowledge of the facts set forth in his answer to the seventh interrogatory. And in answer to the third cross-interrogatory, marked "3," hereto annexed, he answers: That the manner in which he acquired the information given in the several answers here-

before was from a personal and positive knowledge of the facts of the whole transaction, and of the many privations to which Geiger was exposed during the progress of said work, being superintendent of the building, and could not fail to have the knowledge of the facts above set forth; and that he knows of nothing more.

And further this deponent saith not.

THOMAS VERNON.

Deposition of John Emerich.

And at the same time and place, before me also appeared John Emerich, a witness known to me to be of lawful age, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in reference to the claim aforesaid, deposed as follows: I, John Emerich, merchant and dealer in family groceries, aged twenty-seven years, have resided in Fort Smith, Arkansas, during the past year, and ever since 1849; have no interest, direct or indirect, in the claim which is the subject of inquiry, and am not in any manner whatever related to the claimant. I am acquainted with William Geiger; know that he was employed during the years, or a part of the years, A. D. 1854, 1855, and 1856, in the erection of a stone barrack at Fort Washita, in the Choctaw nation, for the United States, during which time I loaned money to said Geiger with which to pay his men, and help to support them and him while employed on said work; and that said Geiger paid me interest on said money at the rate of ten per cent. per annum; that the said Geiger did not pay me said money loaned him, nor the interest thereon, for over eighteen months from the time said money was loaned him, and over twelve from the time that he, said Geiger, agreed to pay the same; and that the said Geiger urged on me as the cause of thus disappointing me, and not making good his promise to pay, that the government had failed to pay him for his work done and being done on said barrack. I am well acquainted with several of the workmen that were employed by said Geiger on said work, and I know that they were all very much dissatisfied with said Geiger for the manner in which said Geiger treated them by being compelled to keep them at times out of their pay for work done, and by keeping them at Fort Washita idle, they fearing that he would not pay them because they were not to work; and I know that they oftentimes spoke in very hard terms of said Geiger in consequence thereof; and I know that said Geiger afterwards paid his men all that was due them; and that he paid them full wages for time spent at Fort Washita idle, when they could not proceed with their work; this I am satisfied of; I have it from the workmen themselves, as well as from Geiger afterward; and a part of the payment, for time spent doing nothing, to said men, came under my own knowledge and observation; and no more.

Further this deponent saith not.

JOHN EMERICH.

Deposition of Jacob Zeigenbein.

And at the same time and place, before me also appeared Jacob Zeiginbein, a witness known to me to be of lawful age, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the claim aforesaid, deposed as follows:

I, Jacob Zeiginbein, stone-mason, aged thirty-five years, have resided in Fort Smith, Arkansas, during the past year, and ever since the year 1854; have no interest, direct or indirect, in the claim which is the subject of inquiry, and am not related in any manner whatever to the claimant; and in answer to the first interrogatory, marked "1," hereto annexed, he answers that he is acquainted with William Geiger, of Fort Smith City, Arkansas, and that he knows that he did erect a stone barrack for the United States at Fort Washita, in the Choctaw nation, some time in 1854, 1855, and 1856.

In answer to the second interrogatory, marked "2," hereto annexed, he answers, that William Geiger had employed on said work thirteen or fourteen hands on an average—he sometimes had as many as twenty men employed on it—at wages of two dollars per day; and that the expense of supporting said men while at work, or while idle, was not less than twenty or twenty-five dollars per month per man.

In answer to the third interrogatory, marked "3," hereto annexed, he answers, that said William Geiger was compelled to suspend his part of the work from failure of the government to cause the remainder of the work to be done by the carpenter in time for said Geiger to proceed with his part. He was thus delayed as many as four or five times; at one time about three months, and all the other times together about two months more.

In answer to the fourth interrogatory, marked "4," hereto annexed, he answers, that said Geiger did return to Fort Smith with his workmen during the progress of said work; that he returned with his workmen two several times, which was caused by a failure of the government to have the carpenter's work done, so that Geiger's part could be proceeded with, and from a failure on the part of the government to have material, rock, and lime hauled to the site of building, in order that Geiger could proceed with the stone-work.

In answer to the fifth interrogatory, marked "5," hereto annexed, he answers, that the distance between Fort Smith and Fort Washita is about one hundred and eighty miles, and the expense of travel from one to the other is from two dollars to two dollars and fifty cents per day per man and horse.

In answer to the sixth interrogatory, marked "6," hereto annexed, he answers, that the expenses of subsistence at Fort Washita, between October, 1854, and November, 1856, either by purchasing supplies and furnishing one's self, or by boarding, were from twenty-five to thirty dollars per month per man.

In answer to the seventh interrogatory, marked "7," hereto annexed, he answers, that he knows that said Geiger was damaged in

his business, by reason of these delays, by not being able to pay his hands regularly; and by being kept nearly three years in the completion of said work, while he could have done his part in eight months, the time contracted; and by setting his men against him, in consequence of the manner in which he was compelled to do, in consequence of the frequent and long delays; in not having the carpenter's work ready for him to proceed; in not having material—brick to build pillars, rock, and lime—ready for him to go on with his part; and by being compelled to double scaffold, in order to try to work, without the proper arrangements being made, so that he could work; that he was damaged in his reputation, by being compelled to borrow money at large rates of interest to pay his men, and by not being able, by reason of said several delays, to meet his engagements and pay said money so borrowed on the strength of said contract with the United States, according to his promise so to do; and that he was also damaged in this, that while he and his workmen, under pay, were idle, he could have been to work elsewhere, and making money, instead of paying men, some thirteen or fourteen in number, for doing nothing; and that he knows of no time for years before or since that provisions rated so high as a part of the time during the progress of said work, though they always command nearly two prices at places so far removed from the States as Fort Washita.

In answer to the eighth interrogatory, marked "8," hereto annexed, he answers, that he knows that said work was finally completed (and received by the proper officer at Fort Washita) by said Geiger, and the said Geiger did fail to receive his pay for the same for a long time after said work was completed, and that he had been obliged to travel to Fort Washita several times money-hunting, seeking there his pay for said work; that he went there three several times on said business, and that he was delayed at one time about six weeks, at the expense of about two dollars and fifty cents per day, sometimes more, as he knows that he could not at one time get to stay at Fort Washita, and was compelled to go out and return frequently twenty-five miles from said fort in consequence thereof, and at increased expense.

And in answer to the ninth interrogatory, marked "9," hereto annexed, he answers, that it was impossible for said Geiger to procure men at Fort Washita suitable for his contract, and that said Geiger was in consequence compelled to keep in pay and expenses, even while idle in consequence of said delays; and that he himself was one of the men who, during said delays, was so kept in pay and expenses while waiting the movement of government to furnish material, &c.

And in answer to the first cross-interrogatory, marked "1," hereto annexed, he answers, that the government officers failed to haul and deliver rock, lime, and brick, in order to enable said Geiger to proceed with his work; that the carpenter's work that was to be done, and was not done in time, was the laying of joist in the second floor.

In answer to the second cross-interrogatory, marked "2," hereto.

annexed, he answers that the data upon which he founds his estimate of damages sustained by said Geiger is founded on the fact that he was employed during all of the time by said Geiger in the erection of said barrack ; that he was an eye-witness to the whole of his privations ; that he was paid by said Geiger, while employed on said work, while idle ; and that he knows that no ordinary amount of damages for said delays would be sufficient to compensate said Geiger.

And in answer to the third cross-interrogatory, marked " 3," hereto annexed, he answers, that he acquired the information given in the foregoing answers from actual observation, being in the employ of said Geiger on said building ; that he knows of all of it from personal and actual observation. And further this deponent saith not, but that he knows no more.

JACOB ZIEGENBEIN.

Deposition of John Beckel.

And, at the same time and place, before me also appeared John Beckel, mayor of the city of Fort Smith, Arkansas, a witness known to me to be of lawful age, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the claim aforesaid, deposed as follows : I, John Beckel, mayor of the city of Fort Smith, Arkansas, aged fifty-two years, have resided in Fort Smith during the last year and during the last sixteen years ; have no interest, direct or indirect, in the claim which is the subject of inquiry, and am not in any way whatever related to the claimant ; and in answer to the first interrogatory, marked " 1," hereto annexed, he answers, that he is acquainted with William Geiger, of Fort Smith city, Arkansas, and that he knows of his having erected a stone barrack for the United States at Fort Washita, in the Choctaw Nation, between 1854 and 1857. In answer to the third interrogatory, marked " 3," hereto annexed, he answers, that said Geiger returned to Fort Smith during the progress of said work, and that said Geiger told him that the reason why he returned was that the carpenter's work on the building was not sufficiently far for him to proceed, and that he was, in consequence, compelled to suspend operations ; that he does not know how long or how often said Geiger was thus delayed. In answer to the fourth interrogatory, marked " 4," hereto annexed, he answers, that said Geiger did return to Fort Smith, with all his workmen, during the progress of said work, as many at least as two several times ; and that the cause of their so returning was that the government was not ready with other parts of the work so that the stone-work could go on. And in answer to the fifth interrogatory, marked " 5," hereto annexed, he answers, that the distance between Fort Smith and Fort Washita is one hundred and eighty miles, and that the usual expense of travel from one to the other is at least twenty dollars per man. In answer to the sixth interrogatory, marked " 6," hereto annexed, he answers, that he does not exactly know, but that he knows that it must have been very high, as at and during a part of that time provisions rated vastly higher than for years before

or since ; that the provisions, such as bacon, flour, &c., commanded prices nearly two hundred per cent. higher than for years before, or than they do now. In answer to the seventh interrogatory, marked "7," hereto annexed, he answers, that he knows that Geiger must have sustained considerable damage by reason of said delays in his business, by not being able to pay his men according to promise, and being compelled to keep his men on hand under pay idle waiting for work, in consequence of the government failing to be always ready for him ; by borrowing money at high rates of interest ; that he loaned him some, and had to wait over a year after due for it ; and that said Geiger's reputation suffered by his not being able to meet his engagements with those from whom he borrowed money, from whom he bought supplies, and with his men ; and all caused by the government keeping him so much longer at the work than the contract called for, the contract being for eight months, while it took nearly three years. And in answer to the eighth interrogatory, marked "8," hereto annexed, he answers, that said work was finally completed and received by the proper officer at Fort Washita ; that said Geiger failed to receive pay for the same until he was obliged to travel several times to said Fort Washita for it ; that he is not certain how often, nor does he know how long at a time, but knows that he was delayed at one time a month or six weeks, at an expense of about three hundred dollars, to say nothing of horse-hire and time away from his business. And in answer to the ninth interrogatory, marked "9," hereto annexed, he answers that it was impossible for said Geiger to have procured workmen at Fort Washita suitable for his contract, and that he was compelled, in consequence, to keep his men in pay and expense even while idle, in consequence of the delays of government.

And in answer to the first cross-interrogatory, marked "1," hereto annexed, he answers, that the government officers failed to have material on hand as per contract, so that Geiger could proceed with his work ; that the carpenter's work that was to be done, and was not done in time was, that one floor of joists was not laid by the carpenters in time for the stone masons to proceed with their work.

And in answer to the second cross-interrogatory, marked "2," hereto annexed, he answers, that the data upon which is founded the amount of damages sustained by Geiger, as stated in answer to the seventh interrogatory, is from knowledge and observation of facts, and that he is satisfied that no ordinary amount—not even as much again as he received for the work—would compensate him fully for his privations, loss, damage, and inconvenience ; for the amount of time (say nearly three years) spent in completion of said work, which could have been done in contract time, (say eight months,) during which he had travelled so often back and forth to Washita, and was kept from undertaking other work, was almost misspent, or at least spent for nought, besides the amount of money paid workmen for doing nothing.

And in answer to the third cross-interrogatory, marked "3," hereto annexed, he answers that a part of his information he had from Geiger's men, who stated at times that they were all compelled to suspend operations in consequence of the delays of government, and the

remainder he has from actual knowledge and observation ; and that he knows of nothing more.

Further this deponent saith not.

JOHN BECKEL.

C. C. BENTON, *Clerk*,
By J. A. ENO, *Deputy Clerk*.

STATE OF ARKANSAS, *County of Sebastian, ss:*

On this 23d day January, A. D. 1858, personally came Benj. F. Atkinson, Lieut. D. P. Hancock, Thomas Vernon, John Emerich, Jacob Ziegenbein, and John Beckel, the witnesses within named, and after having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, and the interrogatories were proposed to said witnesses respectively, and answers thereto were written down in my presence, and in the presence of the witness who then subscribed the depposition in my presence. The depositions of said witnesses, taken at the request of John M. McCalla, attorney for the claimant, to be used in the investigation of a claim against the United States now pending in the Court of Claims in the name of William Geiger, a claimant, and the United States is defendant. The adverse party was notified, did not attend, and did not object.

In testimony whereof, I have hereunto set my hand and affixed
[L. s.] the seal of my office at office, this 23d day of January 1858.

C. C. BENTON, *Clerk*,
By J. A. ENO, *Deputy Clerk*.

Witness' Fees.

[B. F. Atkinson, attendance 50c ; 37 miles' travel,	\$1 02	\$1 52
Lieut. D. P. Hancock, att. 50c ; " " "	\$1 02	1 52
John Emerich, attendance, 50c ; " " "	\$1 02	1 52
Jacob Ziegenbein, attendance 50c ; " " "	\$1 02	1 52
John Beckel, attendance 50c ; " " "	\$1 02	1 52
Clerk's fees.....		10 40
Postage on this.....		18

Copy of Contract.

Articles of agreement made this 18th day of October, 1854, between Captain S. G. French, assistant quartermaster United States army, on behalf of the United States, of the one part, and William Geiger, of the city of Fort Smith, Arkansas, of the second part. This agreement witnesseth : That the said Captain S. G. French, assistant quartermaster United States army, for and on behalf of the United States of America, and William Geiger, for himself, his heirs, executors and administrators, have mutually agreed, and by these presents do mutually covenant and agree to and with each other, (by the approval of the quartermaster general,) in the following manner, viz :

1st. That the said William Geiger shall proceed from this place to Fort Washita, Choctaw nation, and there, under the direction of Major

George P. Andrews, acting assistant quartermaster, or such person as shall be performing the duties of quartermaster at the post, proceed to quarry stone, burn lime, lay the foundation, and erect a stone barrack of such dimensions as may be directed, and in the following manner: The walls of the basement story to be two feet in thickness, the principal story to be one and a half feet in thickness; the whole to be rough-cast on the outside, and finished by "floating" twice; the inside to be of the customary evenness for plastering; the whole to be done in a good, substantial, workmanlike style, including the chimneys, as specified or may be directed; the windows and doors to be arched with *furnished brick*, with sills of dressed stone, of hard and substantial kind.

2d. It is further agreed and understood that the said Geiger quarry all the stone and burn all the lime he may require at his own expense, on or near the military reserve of the garrison; or in other words, he shall furnish all the material and erect the walls and chimneys for the consideration hereinafter mentioned.

3d. It is agreed that the said Captain S. G. French, assistant quartermaster, shall pay, or cause to be paid, for the furnishing of materials, erecting and finishing the walls and chimneys, unto the said William Geiger, or his heirs, executors, &c., for each perch of sixteen and a half cubic feet, as measured in the walls and projecting chimneys, the sum of three dollars and twenty-five cents, windows and doors included in the measurement.

4th. The bricks for arching the windows and doors to be furnished by the United States; but for the window and door sills, of hard dressed stone, said Geiger is to be paid seventy-five cents per superficial foot, so dressed.

5th. For furnishing the lime and plastering the walls and ceilings inside, said Geiger shall be paid thirty-five cents per yard, it being understood that the plastering shall be two coats, walls floated and finished white, but not "hard finished" by trowelling.

Now, the condition of this obligation is such, that if the said William Geiger, his heirs, &c., shall well and truly, and without fail, erect and finish the said walls and chimneys (except the plastering inside) on or before the 30th day of June, 1855, he shall be paid as specified, and this obligation to be void; but otherwise to remain in force, to the effect of the said Geiger forever forfeiting to the United States one-third of all money due him on account of said building and materials; which said third of amount due shall be retained in the hands of the superintending quartermaster, until the entire work is completed as specified.

S. G. FRENCH,
Captain and Assistant Quartermaster.
WILLIAM GEIGER.

Sealed and delivered in the presence of—

S. M. WILLARD,
CHARLES WRIGHT.

Approved.

TH. S. JESUP,
Quartermaster General.

SECOND COMPTROLLER'S OFFICE,
October 23, 1858.

I certify the above is a true copy of the contract of William Geiger on file in this office.

J. MADISON CUTTS,
Comptroller.

Copies of bills paid petitioner.

TREASURY DEPARTMENT,
Third Auditor's Office, October 23, 1858.

SIR: In compliance with your request of this date, I herewith enclose copies of the vouchers for payment to Wm. Geiger, by Lt. D. P. Hancock, in the 2d quarter, 1857.

Respectfully, your obedient servant,

R. J. ATKINSON,
Auditor.

J. M. McCALLA, Esq.,
Washington, D. C.

The United States to William Geiger, from 14th January, 1856, to 30th September, 1856, Dr.

For 856 perch 13 feet masonry, at \$3 25 per perch.....	\$2,784 56
For 2,161 perch 12 feet loading, at 25 cents per perch.....	540 44
For 1,931½ feet of cut stone, at 75 cents per foot	1,448 43
For labor, 20 days, at \$2 50 per day.....	50 00
For service for team and teamster, 43 days, at \$3 00	129 00
For 963 yards of plastering, at 35 cents per yard.....	337 05
For excavation per agreement.....	155 00
For 7 feet of chimney, at \$4 00 per foot.....	28 00
For delivering 57 perch of stone, at \$1 00 per perch.....	57 00
For repairing chimneys, fireplaces, steps, &c.	106 00
	<hr/>
	\$5,635 48
	<hr/>

I certify that the above account is correct and just, and that the work was executed and services rendered, in compliance with agreement made with Capt. S. G. French, A. Q. M., on the 18th of October, 1854, and subsequent agreement with B't Maj. G. P. Andrews, 3d Ar'y, A. A. Q. M., and myself.

J. H. LENDRUM,
B't Capt. U. S. A.

Received, Fort Washita, C. N., April 27, 1857, of 2d Lt. D. P. Hancock, 7th inf'y, A. A. Q. M., the sum of five thousand six hundred and thirty-five dollars and forty-eight cents, in full on the above account.

WM. GEIGER.

The United States to William Geiger, Dr.

1856.

Nov. 25.	To cutting 355 feet stone steps, at 75 cents per foot...	266	25
"	To laying 18 perches stone, at \$3 25 per perch.....	58	56
"	To loading 18 perches stone, at 25 cents per perch...	4	50
		<u>\$329</u>	<u>25</u>

I certify that the above account is correct and just, and that the services were rendered as stated, and that the account has never been paid.

D. P. HANCOCK,
Second Lieut., Seventh Inf, A. A. Q. M.

Received, Fort Washita, C. N., April 27, 1857, of Secoud Lieut. D. P. Hancock, seventh infantry, A. A. Q. M., the sum of three hundred and twenty-nine dollars and twenty-five cents in full on the above account.

WM. GEIGER.

LIEUTENANT HANCOCK'S STATEMENT.

William Geiger's account.

Amount due William Gieger December 31, 1856..... \$6,621 00

Accepted in orders on his account.

1856.		
June 10—	Accepted order in favor of Fry.....	\$210 00
June 10—	Accepted order in favor of Geisler.....	210 00
June 13—	Accepted order in favor of Heiss	167 00
Mar. 22—	Accepted order in favor of Hanna	357 00
June 16—	Accepted order in favor of Dr. J. Burke. 1,	1,100 00
June 16—	Accepted order in favor of Robertson...	34 32
Dec. 1—	Accepted order in favor of J. A. Crawford.....	10 00
Dec. 2—	Accepted order in favor of Jesse Reed...	75 63
Dec. 14—	Accepted order in favor of Charles Lange.....	22 00
Dec. 14—	Accepted order in favor of Long Duplan.	28 00
Dec. 20—	Accepted order in favor of Robertson & Reed.....	96 18
		<u>2,310 13</u>
	Deducted for rations drawn from commissary.....	75 00
	Amount loaned to him by Lieutenant Hancock.....	80 00
		<u><u>2,465 13</u></u>
April 27, 1857—	Paid the balance due him.....	<u><u>4,155 95</u></u>

I hereby certify that the above amount of two thousand three hundred and ten dollars and thirteen cents was drawn by William Geiger in orders on the Quartermaster's department. I further certify that it is a matter of public notoriety that the above orders were given at a discount of ten per cent. I further certify that William Geiger has pay due him from January 14, 1857, to April 27, 1857, inclusive, and at the latter date the amount due him was six thousand six hundred and twenty-one dollars. I also certify that, as far as I can discover, the long delay in receiving pay for his services was not caused by any failure of his in fulfilling the terms of the contract made between him and Captain S. G. French, assistant quartermaster, dated October 18, 1854, but from the long delay of the department at Washington in forwarding the funds necessary for the payment of debts which its agents contracted at this post. I also certify that said Geiger finished all the work for which he received pay more than four months before he was paid.

D. P. HANCOCK,
2d Lieut. 7th Infantry, A. A. Q.

FORT LEAVENWORTH, *February 1, 1858.*

DEAR SIR: I have received your letter of December 15, 1857, respecting the claims of Mr. William Geiger upon the government for damages or expenses growing out of the non-fulfilment by the quartermaster's department of the terms agreed upon and the non-payment of money as it became due to him on his contract.

I do not remember sufficiently well the terms of the contract to be able to give a definite statement on the subject; for this he will have to depend upon Captain Lendrum or Captain French, the quartermasters. I remember perfectly well that Mr. Geiger had a number of men employed; that the difficulties of procuring supplies of different kinds interfered with the work on which Mr. Geiger's labors depended, and the great difficulty, and, indeed, impossibility, of procuring funds to meet payments, as they became due, by the quartermaster.

It was so with all, or nearly all, even of the mechanics and laborers employed by the department, and they were compelled to discount their claims against government in order to raise the money required for their ordinary expenses, (except, perhaps, the purchase of food; rations in some cases, if not all, being supplied at contract price by government.) I have no doubt that Mr. Geiger suffered considerable losses in this manner. How much I cannot pretend to say, but in all probability more than enough to swallow up all the profits of his contract. I am not surprised to hear that the results to him of the failure to supply his hands with work, so as to keep them employed, and the delays in paying him his dues have proved disastrous. The evils and hardships to all employed on the public works were obvious at the time, and caused much annoyance to the officers connected with them, and I would be glad to see compensation made to Mr. Geiger for the losses he sustained through no fault of his own. I cannot now

make a more particular statement than the foregoing. If what I have already said, or its substance, can be made useful to you, and you want it in a special form, by making it out and reading it to me you will obtain my signature.

Respectfully, your obedient servant,

HENRY I. HUNT,

Bvt. Major U. S. A., (late) com'g Fort Washita.

IN THE COURT OF CLAIMS.

No. 1665.

WILLIAM GEIGER *vs.* THE UNITED STATES.

Interrogatories to be proposed to Thomas Vernon, a witness for the United States.

1. If the petitioner was delayed in his work on the barrack at Fort Washita for the space of two days by the failure of the United States to perform some act which they were bound to perform, then state in what month this delay occurred, and what particular thing was it which the United States were bound to do and did not perform.

2. If the petitioner was obliged to suspend work a second time for the space of two months by the failure of the United States to perform some act which they were bound to but did not perform, then state when and in what months this suspension occurred, and what particular thing it was which the United States did not perform in due time.

3. State how long after the suspension of the work by Geiger it was before the United States officers began to perform their part, how long they were in doing the work, and how long after they had finished before Geiger resumed work.

4. Where were Geiger and his hands during the suspension? If they were absent from Fort Washita, state how long they were absent, and did they return before the work was ready for them to resume?

5. If the petitioner was obliged to suspend work a third time for the space of six weeks by the failure of the United States to perform some act which they ought to have performed, then state particularly what this act was, and in what months the suspension occurred.

6. State when the United States officers began to perform their part of the work; how long they were about it; and how long after they had finished was it before Geiger's men resumed work.

7. Where were Mr. Geiger and his men during this suspension? If they left Fort Washita, state how long they were absent, and whether they returned before the work was ready for them to resume.

8. If the petitioner was obliged to suspend work a fourth time for the space of three or four months by the failure of the United States to perform some act which they ought to have performed, then state what was this act, and in what month the suspension occurred?

9. State when the United States officers began on this occasion to perform their part of the work ; how long they were about it ; and how long after it was finished was it before Geiger's men resumed work ?

10. Where were Mr. Geiger and his men during this suspension ? If they left Fort Washita, state how long they were absent, and whether they returned before the work was ready for them to resume.

Cross-interrogatories.

1. Did you not keep Geiger advised of the times the work was ready for him, during the various absences referred to in the foregoing interrogatories, and did he not always attend promptly on such notices being given ?

2. Was it not less expensive to Geiger and his hands to return to Fort Smith during the suspensions of work than to remain at Fort Washita ? Would the government be benefited by their remaining at Washita ?

3. Reply to such interrogatories as may be put to you by Geiger or his attorney present.

JOHN M. McCALLA,
Attorney for Geiger.

The commission of these interrogatories appears from the schedule hereto annexed.

C. C. BENTON, *Clerk.*
By J. A. ENO, *Deputy Clerk.*

IN THE COURT OF CLAIMS.

No. 1,665.

WILLIAM GEIGER vs. THE UNITED STATES.

Interrogatories to be proposed to witnesses on the part of the United States.

1. Were you employed by the petitioner to work upon the new barrack at Fort Washita ; if so, when were you so employed ?

2. During your employment, was the work at any time suspended for the want of materials, such as building stone, or lime, or by the failure of the carpenters to lay a floor of joists ? If so, state how often the work was suspended ; how long on each occasion ; and in what months these suspensions happened.

3. How did you dispose of your time during each of these suspensions of work ; did you remain at Fort Washita, or go away ; were you entirely idle, or did you do any work of any kind ; if you worked, did you earn any money ?

4. Did Mr. Geiger pay you wages during the suspension of the

work ; did he pay your board ; for how long a time and at what rate did he pay your wages and board during each of these suspensions?

5. Were you always ready and upon the spot to go to work as soon as the materials had been hauled? I mean the stone and lime.

6. Besides the suspensions caused by the failures of the United States, what other suspensions of the work happened on account of the season and other causes? And state how long in all you were engaged in actually working on the building?

JNO. D. McPHERSON,
Deputy Solicitor.

Cross-interrogatories.

1. Had not Geiger been always liable to be called on to resume work at Fort Washita during the suspensions, could he not have had constant employment at profitable wages for himself and hands?

2. Did he not require you to keep always ready to go to Washita when you should be wanted ; and did you not obey all his calls?

3. Please answer such interrogatories as may be put to you by Geiger, or his attorney, present.

JNO. M. McCALLA,
Attorney for Geiger.

The commission of these interrogatories appear from the schedule hereto annexed.

C. C. BENTON, *Clerk.*
By J. A. ENO, *Deputy Clerk.*

Depositions of witnesses taken and subscribed before me, C. C. Benton, clerk of the circuit court within and for the county of Sebastian, in the State of Arkansas ; duly commissioned as such on the 10th day of September, 1858, at the city of Fort Smith, in said county and State, in pursuance of a commission hereto annexed, and to be read as evidence in a certain cause now pending in the Court of Claims at the city of Washington, District of Columbia, wherein William Geiger is plaintiff and the United States is defendant. On the part of the defendant :

Deposition of Thomas Vernon.

Thomas Vernon, a witness, known to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit :

Interrogatory 1. If the petitioner was delayed in his work on the barrack at Fort Washita for the space of two days by the failure of the United States to perform some act which they were bound to perform, then state in what month this delay occurred, and what particular thing was it that the United States was bound to do and did not perform.

Answer. I reside in the city of Fort Smith, and have within the last twelve months. My occupation is that of a carpenter; and am forty-six years of age. I went to Fort Washita in March, 1855, about the 10th. I was employed by Captain French, the acting quartermaster at Fort Smith, to do so and to take charge of all the work at Fort Washita. When I arrived at Fort Washita I saw Mr. Geiger, who had several hands in his employ and all idle; and it was some three days before they were able to go at work, on account of the rock and lime not being hauled, the same being about two miles from said garrison. My understanding of the contract between the United States and Mr. Geiger was, that the government was to haul the rock and lime from the quarry and kiln to the place of building.

Interrogatory 2. If the petitioner was obliged to suspend work a second time for the space of two months by the failure of the United States to perform some act which they were bound to but did not perform, then state when and in what months this suspension occurred, and what particular thing it was which the United States did not perform in due time.

Answer. The petitioner was obliged to suspend work a second time for the space of two months or more on account of there not being joists and other timbers necessary on hand, as also brick for pillars and chimneys. This suspension was some time, as well as I can recollect, in July, 1855, and until about the middle or last of September of the same year. As I understand the contract made by the United States with Geiger, they were to furnish or provide the materials for the carpenter work so that said Geiger would not be delayed in his work.

Interrogatory 3. State how long after the suspension of the work by Geiger it was before the United States officers began to perform their part; how long they were in doing the work; and how long after they had finished before Geiger resumed work.

Answer. The officers had contracted with certain persons for the materials (timber and brick) some time before the suspension by Geiger, which they failed to deliver as per said contract. There was no delay on the part of the carpenters, except for want of material.

Interrogatory 4. Where were Geiger and his hands during the suspension? If they were absent from Fort Washita, state how long they were absent; and did they return before the work was ready for them to resume?

Answer. Geiger and his hands were not at Fort Washita during this time. I think they were gone some two months or more, and that they returned just about the time the the work was ready for them to resume.

Interrogatory 5. If the petitioner was obliged to suspend work a third time for the space of six weeks by the failure of the United States to perform some act that they ought to have performed, then state particularly what this act was, and in what months this suspension occurred.

Answer. I do not know whether it was the fault of the United States or Mr. Geiger at the third suspension, but that it was cold weather and the teamsters in employ of government would not haul rock for the building. I think it was some five or six weeks that Mr.

Geiger and his hands were detained by not having the rock hauled. This suspension was from about the last of December, 1855, to about the 20th of February, 1856.

Interrogatory 6. State when the United States officers began to perform their part of the work, how long they were about it, and how long after they had finished was it before Geiger's men resumed work.

Answer. I think the officers were doing all they could the whole time I was there to forward on the work, and were about all the time, and as soon as the material was on the ground Geiger's men commenced work.

7th interrogatory. Where were Mr. Geiger and his men during this suspension? If they left Fort Washita, state how long they were absent, and whether they returned before the work was ready for them to resume.

Answer. Mr. Geiger came to Fort Smith with me, as also one of his men, for the purpose of getting money to pay off his hands; the rest of his hands, about eight in number, remained at Fort Washita.

8th interrogatory. If the petitioner was obliged to suspend work a fourth time for the space of three or four months by the failure of the United States to perform some act which they ought to have performed, then state what this act was, and in what month the suspension occurred.

Answer. Yes; the work was suspended on or before the first of July, 1856, for the want of lathing nails which the government was to furnish.

9th interrogatory. State when the United States officers began on this occasion to perform their part of the work; how long they were about it, and how long after it was finished. Was it before Geiger's men resumed work?

Answer. I don't know when the United States officers began to perform their work on this occasion; I know that as soon as they were ready for Geiger to go to work he did so.

10th interrogatory. Where were Mr. Geiger and his men during the suspension? If they left Fort Washita, state how long they were absent, and whether they returned before the work was ready for them to resume.

Answer. Mr. Geiger and his men were at Fort Washita during this suspension.

Cross-examined.

1st interrogatory. Did you not keep Mr. Geiger advised of the times the work was ready for him during the various absences referred to in the foregoing interrogations? and did he not always attend promptly on each notice being given?

Answer. I gave him notice of the different times, and he was always ready.

2d interrogatory. Was it not less expensive to Giger and his hands to return to Fort Smith during the suspension of work than to remain at Fort Washita? Would the government be benefited by their remaining at Washita?

Answer. I think that the expenses would have been about the same, the cost of living there being about twenty-five dollars per month, and the expense of living at Fort Smith is about twelve dollars per month, and the expense of coming from Fort Washita and returning is about fifty dollars; I do not think that the government would have been benefited by Geiger and his hands being present at any time during these several suspensions. Further deponent saith not.

THOMAS VERNON.

Not being able to complete the depositions in this cause this day, the taking of the same stands adjourned until to-morrow morning at 8 o'clock.

C. C. BENTON, *Clerk.*

By J. A. ENO, *Deputy Clerk.*

Saturday morning, 8 o'clock, September 11, 1858. Met pursuant to adjournment. No witnesses appearing this day, the same stands adjourned until Monday morning next, at 8 o'clock.

C. C. BENTON, *Clerk.*

By J. A. ENO, *Deputy Clerk.*

Monday morning, 8 o'clock, September 13, 1858. Met pursuant to adjournment. No witnesses appearing this day, the same stands adjourned until Tuesday morning next, at 8 o'clock.

C. C. BENTON, *Clerk.*

By J. A. ENO, *Deputy Clerk.*

Tuesday morning, 8 o'clock, September 14, 1858. Met pursuant to adjournment.

Deposition of Joseph Knoble.

Joseph Knoble, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

I live in the city of Fort Smith, Sebastian county, and have for the past year. I am a stone-mason by trade, and am thirty-three years of age. I have no interest in this suit, either directly or indirectly, and am in no way related to the claimant in this cause.

1st interrogatory. Were you employed by the petitioner to work upon the new barrack at Fort Washita; if so, when were you so employed?

Answer. I was employed by the petitioner to work on the barrack at Fort Washita on the 14th day of November, 1854. Commenced work and quit work in December, 1856; on or about the 15th day.

2d interrogatory. During your employment was the work at any time suspended for the want of materials, such as building stone or

lime, or by the failure of the carpenters to lay a floor of joists. If so, state how often the work was suspended, how long on each occasion, and in what month these suspensions happened.

Answer. There were twice that the work was suspended for the want of having the rock and lime hauled to the place of building; first time in March, 1855, about three days; second time in October, 1855, four days, for the want of rock. The work was suspended for want of carpenter's work twice; the first time from June 30, 1855, to September 12, 1855. Second time from October 28, 1855, to November 21, 1855. There was plenty of rock quarried, and plenty of lime burnt, and the cause of the suspension of the work was because the same was not hauled to the building.

3d interrogatory. How did you dispose of your time during each of the suspensions of work? Did you remain at Fort Washita or go away? Were you entirely idle, or did you do any work of any kind? If you worked, did you earn any money?

Answer. I was idle, and at Fort Washita during the time we were out of rock and during the suspension of time for want of the carpenter's work. On the first occasion I returned to Fort Smith, but was not engaged in any work, holding myself in readiness to go to Fort Washita at any time that Mr. Geiger might call on me, and the second time I remained at Fort Washita. I did not earn any money during either of these intervals.

4th interrogatory. Did Mr. Geiger pay you wages during the suspension of the work? Did he pay your board? For how long a time and at what rate did he pay you wages and board during each of these suspensions?

Answer. Mr. Geiger paid me the same wages for the time of suspension of the work as while at work; also paid my board during the same time. I do not know what it cost Mr. Geiger to board me, but that he employed a cook and kept a mess. Provisions were worth as follows: coffee, 25 cents per pound; flour, \$8 per 100 pounds; bacon, about 20 cents per pound; sugar, 33½ cents per pound; and while at Fort Smith he, the said Geiger, paid my board, which was about \$12 per month. My wages were \$3 per day. I was foreman of the work.

5th interrogatory. Were you always ready, and upon the spot, to go to work so soon as the materials had been hauled—I mean the stone and lime?

Answer. I was always ready.

5th interrogatory. Besides the suspensions caused by the failures of the United States, what other suspension happened on account of the season and other causes; and state how long, in all, you were actually engaged in working on the building?

Answer. I think I lost about 11 days on account of lumber to make the mortise-bed, scaffolding, &c., and 14 days on account of the inclemency of the weather. I was engaged from the commencement of the building to its completion, so far as Mr. Geiger was concerned, with the exception of the time of suspension of the work, as above

stated. In addition to the time lost in consequence of the suspension of work, as above stated, there was, from the last of June, 1856, to the last of September of same year, a suspension of time on account of not having nails for lathing; and that said Geiger paid me wages and board during said time; during the rest of the time I was at work, with the exception of four days, when I was sick, which Mr. Geiger did not pay me wages for. I worked from the 14th of November, 1854, to about the 15th of March, 1855; and from the 19th of March, 1855, to about the 30th of June, 1855; and from the 12th of September, 1855, to about the 5th of October, 1855; and from the 9th of October, 1855, to the 28th of October, 1855; and from the 21st of November, 1855, to June 30, 1856; and from the 30th of September, 1856, to about the 15th of December, 1856.

Cross-examined.

1st cross-interrogatory. Had not Geiger been always liable to be called on to resume work at Fort Washita during the suspension, could he not have had constant employment, at profitable wages, for himself and hands?

Answer. He could.

2d cross-interrogatory. Did he not require you to keep always ready to go to Washita when you should be wanted, and did not you obey all his calls?

Answer. I was always ready, and went whenever he called on me, and could not engage in any other work on account of my engagement with him.

3d cross-interrogatory, (by Mr. Geiger.) How many times did Mr. Geiger have to come from Fort Washita to Fort Smith on account of the suspension of the work at that place?

Answer. About six times; it would take some ten days to perform the trip, at an expense of about \$25 for each trip.

JOSEPH KNOBLE.

[Not having time to complete these depositions, the same are adjourned until to-morrow morning at 8 o'clock.]

Wednesday morning, 8 o'clock, met pursuant to adjournment.

Deposition of Jacob Ziegenbein.

Jacob Ziegenbein, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

I live in the city of Fort Smith, and have the past 12 months; my occupation is that of a stone-mason, and am 35 years old.

Answer to 1st interrogatory. I was employed by Mr. Geiger to work upon the new barracks at Fort Washita about the 1st of November, 1854. I worked for said Geiger about seven or eight days,

when I was taken sick, and returned to Fort Smith, where I remained until about the 10th of September, 1855.

Answer to 2d interrogatory. During the time I was with said Geiger there were twice we had to stop work on account of the carpenter's work not having been done. The first time was on account of the joists not being put in, and we were detained, to the best of my recollection, from work some three or four weeks, which was from some time of the last of September, 1855, to October of the same year. The second time was, to the best of my recollection, on account of the joists, or some of them, not being in, and was, I think, about two weeks. There was also another time that Geiger was obliged to suspend work on account of there being no lathing nails on hand; this, I think, was in the spring of 1856; cannot say how long a time. I do not know of my own knowledge of any other times that Geiger had to suspend work. I was sick a portion of the time, and at Fort Smith, while in Geiger's employ.

Answer to 3d interrogatory. During the first suspension of work, I remained at Fort Washita with the other hands, and was entirely idle all of the time. The second time the same, and the third time I came to Fort Smith, at which time I quit work for said Geiger. Mr. Geiger could not and did not pay me my wages, as by our contract, for some nine months after I quit work.

Answer to 4th interrogatory. Mr. Geiger did not pay me wages during these suspensions, but boarded me. I do not know how much it cost Geiger to board me during these suspensions, but that provisions were very high during the time I was at Fort Washita; he paid my board for some five or six weeks' time.

Answer to 5th interrogatory. I was not there at any time when rock and lime was needed to be hauled; but, as before stated, was absent on account of sickness for some seven or eight days after commencing to September, 1855.

Answer to 6th interrogatory. In the winter of 1855 and 1856, Geiger and all of the hands stopped work about three or four weeks, on account of the inclemency of the weather. I cannot tell exactly how long I was actually engaged in working on the barracks at Fort Washita, but think from one hundred and twenty-five to one hundred and thirty days.

Cross-examined.

Answer to 1st cross-interrogatory. I do not know that Geiger was liable at any time to be called upon to resume work during the suspensions before mentioned, but was always ready to commence work whenever the carpenter's work was ready for him. Geiger could have had plenty of work in Fort Smith during the time he was compelled to be at Fort Washita, and at profitable wages.

2d interrogatory.

Answer. Mr. Geiger always required me to be in readiness to go to work at any time I should be called on, and I always obeyed his commands.

3d interrogatory. Did not Geiger sustain a heavy loss on account
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of credit, and the suspensions of work at Fort Washita, by having to borrow considerable sums of money, as well as being delayed with his hands?

Answer. I think he did.

4th interrogatory. Did Mr. Geiger send out his hands at any time to help the teamsters load the rock at the quarry, for the purpose of progressing with the mason work? If so, how long were they so employed?

Answer. Whenever the wagons went out to haul rock, Mr. Geiger sent out hands to help load. This was done by Geiger all the time I was there, and was done, as I understood, for the purpose of progressing with the work.

5th interrogatory. Was Geiger bound by the contract to help load the rock?

Answer. Having never seen the contract, I do not know. Further deponent saith not.

JACOB ZIEGENBEIN.

C. C. BENTON, *Clerk.*

By J. A. ENO, *Deputy Clerk.*

Deposition of George Hinch.

George Hinch, a witness, known to me to be of lawful age, being to me at the time and place aforesaid producéd, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matter in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

I reside in the city of Fort Smith, in Arkansas, and have for the last twelve months past. My occupation is that of a wagoner, and am seventy-seven years of age.

1st interrogatory.

Answer. I was employed by Mr. Geiger to work on the new barrack at Fort Washita, and left Fort Smith on the first of November, 1854.

2d interrogatory.

Answer. During the time I was in the employment of Mr. Geiger, the work was suspended three different times. First, on account of there being no rock hauled, which was, to the best of my recollection, in the spring of 1855. I do not recollect how long Mr. Geiger remained idle at this time. The second suspension was on account of the carpenter work. I mean that there was no lumber there, such as plank and joist, which were necessary in order for Mr. Geiger to proceed with his work. I do not recollect when this suspension of work happened, but think it was in the summer of 1855; neither do I recollect how long a time it was before the carpenters were ready for Geiger. The third suspension of the work was on account of the brick for building the chimneys and pillars to said barrack not being there. This suspension was from the middle or last of July, 1855, to about the first of October, 1855.

3d interrogatory.

Answer. During the suspension of the first and second times, was all the time engaged in helping the teamsters load the rock at the quarry, and in quarrying rock while they were gone. On

the third time, I quit work for Mr. Geiger, and went to work for government. I was at Fort Washita all the time. I worked all the time of these suspensions, and looked to Mr. Geiger for my pay.

4th interrogatory.

Answer. Mr. Geiger paid me for all the time I was with him, which was from the time I commenced for him until the third suspension of his work, and he also boarded me as well as all his hands. Geiger paid me twenty dollars per month. I do not know what it cost Mr. Geiger to board one per month, but provisions of all kinds were very high during the whole time.

5th interrogatory.

Answer. I was always on the spot and at work.

6th interrogatory.

Answer. I think there was some three or four days the last of February, 1855, we had to stop work on account of cold weather. I was at work for Mr. Geiger, on the building and in the quarry, some little over eight months.

Cross-examined.

1st interrogatory.

Answer. Mr. Geiger, to the best of my understanding, was liable to go to work when the other work was ready. I think Mr. Geiger could have been profitably engaged as well as his hands.

2d interrogatory.

Answer. I was at Fort Washita the whole time, and at work for Geiger, and did whatever I was directed.

3d interrogatory. Was there any complaint among Mr. Geiger's hands because he did not pay them according to his and their contract, and did they not often refuse to work on said account?

Answer. There was considerable complaint among Mr. Geiger's hands because he did not pay them, and oftentimes were careless about going to work.

4th interrogatory. How many hands did Mr. Geiger have employed to work on the building?

Answer. From twelve to fifteen.

5th interrogatory. Did Mr. Geiger pay his hands wages and board them during these suspensions?

Answer. I know he (Geiger) paid all his hands that were at work by the month, and boarded all.

6th interrogatory. How long was Mr. Geiger in finishing his contract on said building?

Answer. To the best of my knowledge he was some time over three years.

7th interrogatory. Could he have completed his contract in less time if he had not been detained by the failure on the part of government to do their work? and, if so, how long would it have taken him?

Answer. He could have completed his work in less time if he had not been detained; I think in less than one-third of the time, from the hands he had employed.

Further deponent saith not.

GEORGE HINCH.

STATE OF ARKANSAS, *County of Sebastian, ss :*

On this 10th, 11th, 13th, 14th, and 15th days of September, A. D. 1858, personally came Thomas Vernon, Joseph¹ Knoble, Jacob Zeingenbein and George Hinch, the witnesses within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within depositions were written down by me and then proposed by me to the witness, and the answers thereto were written down by me in the presence of the witness, who then subscribed the deposition in my presence. The depositions of Thomas Vernon, Joseph Knoble, Jacob Ziengenbein and George Hinch, were taken at the request of the solicitor of the Court of Claims on the part of the United States, to be used in the investigation of a claim against the United States, now pending in said Court of Claims, in the name of William Geiger against the United States.

The adverse party was notified, did attend, and did not object only by cross-interrogatories.

C. C. BENTON, *Clerk.*

By J. A. ENO, *Deputy Clerk.*

Clerk's fees.....	\$50 00
Witness' fees.....	4 00
	<hr/>
	54 00
	<hr/>

STATE OF ARKANSAS, *County of Sebastian, ss :*

I, C. C. Benton, clerk of the circuit court within and for the county and State aforesaid, do hereby certify that the above is a true, complete, and perfect statement of the transactions and proceedings in the above entitled cause as the same appears hereunto annexed.

In testimony whereof, I have hereunto set my hand and seal [L. S.] this 16th day of September, A. D. 1858.

C. C. BENTON, *Clerk.*

By J. A. ENO, *Deputy Clerk.*

Deputy Solicitor to the Quartermaster General.

OFFICE SOLICITOR COURT CLAIMS,
May 14, 1858.

GENERAL: I respectfully enclose herewith a copy of the petition of Wm. Geiger, asking indemnification for losses incurred in consequence of delays caused by the failure of the United States to furnish materials and perform their part of the work on the new barracks at Fort Washita, for which he had contracted to build walls, &c. This was in 1554, '55, '56.

I also enclose memoranda of points upon which information is especially desired, and respectfully suggest that if the information be not

on the files of your office, the officers in charge of the work be called on for report.

Very respectfully,

JNO. D. McPHERSON.

Major General JESUP, *United States Army.*

Mr. Geiger was contractor for building walls and chimneys and plastering new barracks at Fort Washita. The United States were to do all the carpenter's work, and to haul stone and lime and other materials.

It is alleged by Geiger that the United States did not do their part promptly; that he was delayed by the failure to lay the joists and to haul stone, &c.; that he was delayed four several times, viz: for two days, for two months, for six weeks, and for three or four months.

The suspension for these times is proved by Thomas Vernon, architect.

Geiger alleges that he kept his entire force of hands (13) under pay during the whole of this suspension, and claims for the loss thus incurred, besides other losses not necessary to mention.

It is desired to know how far the statement is true.

How long after the walls were ready for the joists was it before the joists were laid? After the stone was quarried by Geiger, how long was it before enough was hauled to keep his men at work? How many times did the supply fail? Was he always ready when the supply came?

Was no arrangement made with Geiger about this delay? Was he left in daily expectation from day to day for one, two, three or four months at a time of being able to go on with his work? Was no warning given him, or had he not reason himself to know that he had better discharge his hands until work was ready? Was he really under the necessity of keeping his men idle for such long periods as those above stated? Did he never complain, and if he did complain what conversation passed on such occasions?

On the whole, the transaction as stated by the petitioner, is not in accordance with the ordinary course of business, nor is any sufficient cause assigned for any such extraordinary deviation.

The men went home to Fort Smith three times during the suspensions. It is not to be credited that Geiger would suffer *every one of them*, (13,) *without exception*, to lie idle at their own houses and pay their board there for three months at a time.

The officers in charge of the work can no doubt throw light on this transaction.

J. D. McPHERSON, *Deputy Solicitor.*

Quartermaster General to the Deputy Solicitor.

QUARTERMASTER GENERAL'S OFFICE
Washington City, May 22, 1858.

SIR: You are respectfully informed, in answer to your letter of the 14th instant, which covered a copy of William Geiger's petition, ask-

ing indemnification for losses incurred by him while engaged in building a barrack at Fort Washita, that the information you seek cannot be obtained in this office. The officers who performed duty in the quartermaster's department at Fort Washita, during the time embraced in Mr Geiger's petition, have been called upon for reports in the case, which, as soon as they are received, will be referred to you in compliance with your request.

Very respectfully, your obedient servant,

TH. S. JESUP,
Quartermaster General.

JOHN D. McPHERSON, Esq.,
Assistant Solicitor Court of Claims.

Deputy Solicitor to the Quartermaster General.

OFFICE OF SOLICITOR COURT CLAIMS,
October 21, 1858.

GENERAL: Under date of May 21, 1858, I was informed that officers of your department had been called upon for reports in relation to the claim of William Geiger for indemnity for loss by delays in building barracks at Fort Washita, copies of which reports would be sent me.

If any have been received I would be obliged for copies authenticated to be laid before the court.

Very respectfully,

JNO. D. McPHERSON,
Deputy Solicitor.

Maj. Gen'l JESUP,
Quartermaster General, U. S. Army.

Quartermaster General to the Deputy Solicitor.

QUARTERMASTER GENERAL'S OFFICE,
WASHINGTON, October 30, 1858.

SIR: In compliance with the request contained in your letter of 14th May and of the 21st inst., the enclosed information has been obtained from the several indicated sources, and is transmitted for the use of the Court of Claims in the case of Wm. Geiger vs. The United States.

Very respectfully, your obedient servant,

TH. S. JESUP,
Quartermaster General.

JNO. D. McPHERSON, Esq.,
Deputy Solicitor Court of Claims, Washington, D. C.

Report of Lieut. D. P. Hancock.

CAMP NEAR FORT LEAVENWORTH, May 31, 1858.

SIR: I have the honor to acknowledge the receipt of your letter, dated May 21, 1858, enclosing a set of questions referring to a claim of one Geiger against the United States.

I am sorry to say that, although the claimant was paid finally by myself, I can give you no information on any of the points desired. I do not think he did any work while I was at the post. I think, however, that he was delayed some four or five months after I came to the post before he received his money, and I believe for a long time before I came to the post. Mr. Geiger got a full affidavit of all the information I possessed on the subject several months ago, and if you will apply for that, (I presume it is at the solicitor's,) all information that concerned his claim that I knew anything about is contained in it. I, myself, am aware of Mr. Geiger having sold orders on the A. A. Q. M. for quite large amounts in consequence of non-payments.

I have now with me no paper or document to give you any information on the points required. I was not stationed at the post at the time he was building the barracks, and cannot give you any definite information on any of the points asked for in the letter. I refer you again to my affidavit before mentioned. I also refer you to Major Hunt, then commanding officer at Fort Washita, and Lieut. A. L. Long, second artillery, then quartermaster at same post, both now belonging to the third column, army of Utah, and also to Capt. J. H. Lendrum, third artillery, also quartermaster when the barracks were constructed.

I am respectfully, your obedient servant,

D. P. HANCOCK,

Second Lieutenant Seventh Infantry.

Major General T. S. JESSUP,

Quartermaster General, U. S. A., Washington, D. C.

A true copy from the original on file in the Quartermaster General's office.

W. H. GORDON,
Chief Clerk.

Report of Lieutenant J. H. Lendrum.

PRESIDIO OF SAN FRANCISCO, CALIFORNIA, July 4, 1858.

GENERAL: I have the honor to make the following statement in answer to your letter of May 21st, 1858, received on the 19th of June, in reference to a claim of William Geiger, contractor for building barracks at the post of Fort Washita, Choctaw nation. The contract was made by Captain S. G. French, assistant-quartermaster, U. S. A., October 18th, 1854, at Fort Smith, Arkansas, (184 miles from Fort Washita). Geiger was delayed in his work on account of the post quartermaster not being able to procure lumber to follow up his (Geiger's) work. His principal workmen, if not all, were brought from Fort Smith. The men not being in my employ I have no means of ascertaining the number of days that he was detained, or whether he boarded all his men during the time. At different times I know that during the suspension a number returned to Fort Smith. Geiger was informed by me on several occasions about the time that lumber

would be received. I could give him no positive answer about exact time, as it had to be hauled a long distance, and the probable failure of contractors.

It is not very probable that he would have kept workmen under pay for the time charged or claimed, *one, two, three, or four months* at a time. *There was no time that they were idle two months at the post.* They generally returned to Fort Smith. I consider the claim an extraordinary one.

Very respectfully, your obedient servant,

J. H. LENDRUM,
Brevet Captain U. S. A.

General T. S. JESUP,

Quartermaster General, U. S. A., Washington, D. C.

A true copy from the original, on file in the Quartermaster General's office.

W. H. GORDON, *Chief Clerk.*

IN THE COURT OF CLAIMS.

WILLIAM GEIGER *vs.* THE UNITED STATES.

CLAIMANT'S BRIEF.

The Contract.

On the 18th of October, 1854, William Geiger entered into a contract, at Fort Smith city, with Captain French, of the quartermaster's service, to erect certain parts of a stone barrack at Fort Washita, in the Choctaw nation, 180 or 200 miles distant, to be completed by the 30th June, 1855. Geiger was to build the walls and chimneys of stone, make the door and window arches of brick, rough-cast the walls outside, and plaster them inside, and was to quarry the rock and burn the lime on or near the military reserve of the garrison. The government was to haul the rock and lime to the site, and furnish brick for the arches, and, by contracts with carpenters and other parties, was to carry on the other parts of the work *pari passu* with Geiger. (See contract, pages 4 and 22.)

Performance of contract by claimant.

About the 1st of November, 1854, Geiger, with thirteen workmen, proceeded to Fort Washita, and commenced his operations by quarrying rock and burning lime, and as soon as he had prepared a sufficiency of the materials was ready to commence and carry on the work. (See Hinch's dep., p. 33.)

He soon encountered difficulties which delayed him. The first was a failure of the officer to have the stone, lime, and sand hauled to the site; then the contractor for furnishing materials for the carpenter

failed to deliver joists for the floor ; then nails were wanting ; then bricks for pillars and chimneys ; and by one failure or another of the government, the claimant was kept back from his work in such manner as that he could not complete the job sooner than December, 1856, instead of June, 1855, a period of one year and a half beyond the contract time.

Every witness who has deposed testifies that Geiger was always ready with his hands for work when the work was ready for him. The extraordinary fact is fully proved that, during that ruinous delay, he paid and boarded his workmen when idle as well as when at work ; and, although other employers desired his services on profitable work, he refused to tie himself up so that he should be unable to answer a call from the United States. It is proved by Vernon, the superintendent and architect of the barracks, that he always notified Geiger when he could proceed in his work, and that he was always ready at the time specified. It is also proved that, so protracted were the delays, and so high was living at Fort Washita, he removed his workmen back to Fort Smith three times, at a heavy expense, to escape the heavier expense at the former place. With a resolution and perseverance worthy of a better fate, he did not falter until he finished his contract, and delivered the building to the government in good order, as is proved by Lieutenant Hancock, (see p 14) and Vernon's dep., (p 28.)

It is proved that Geiger could have completed the work in the time stipulated in the contract. He always had a full force employed—sometimes as many as twenty men, and on an average fourteen hands. (Ziegenbein's dep., p. 17 ; Hinck's, p. 34.) He always had plenty of rock quarried and lime burned, but it was not hauled to the building. (Knoble's dep., p. 29.) He employed a cook, and kept a mess for his hands. When teamsters went to haul rock and lime, he always sent his men to help load. (Ziegenbein, p. 32, and Knoble, p. 30.)

The failure on the part of the government.

The United States, by their proper agent, bound the claimant, under a heavy penalty, to erect, within a fixed time, barracks at Fort Washita, and, in law and justice, were bound themselves to do certain parts of the work, by other contractors, in joint progress with Geiger. He was to prepare a part of the materials, build the walls and chimneys, and plaster the inside walls and ceilings ; but he could do no part of his work except supplied by government with the materials, and by the remainder of the work being kept up with his work. These were duties devolved on the government, and it is proved by incontrovertible testimony that it failed to come up to its obligations in every particular. When he had prepared the rock at the quarry, and the lime at the kiln, he had to remain idle, waiting for them to be hauled to the building. When Geiger had progressed with his work until pillars and arches were to be built, he had to wait until government could procure the brick, which by the contract it was to furnish. When Geiger reached the square for the first floor, then he had to wait until the government should have the joists laid ; and

even the lack of lathing nails, from a similar failure, caused one of his delays and losses.

When the work was at last finished, in December, 1856, which but for the above delays and failures of government would have been completed in June, 1855, and the unfortunate contractor presented his bill for approval and payment, it was promptly approved by the proper officer; but it required three or four wearisome and expensive journeys to Fort Washita, with delays, one of which was for six weeks, at an expense of two dollars per day, before he could receive the pay acknowledged to be due him. The government signally failed to perform its obligations to Mr. Geiger.

What injury has Geiger sustained by that failure?

That Geiger's workmen were dissatisfied and quarrelled with him because of these delays, under the belief he would not pay them for lost time, and because of his inability to make payments as they desired, was an evil that cannot be estimated in money; but that he should be compelled to pay them for lost time, besides supporting them, and transporting them two or three times to Fort Smith and back again, at great expense, but not greater than it would have been had they remained at Fort Washita, are facts which are exhibited in his accounts, page 7, in dollars and cents. Almost every witness proves the extraordinary fact that Geiger did so pay his workmen. (Atkinson, p. 12; Vernon, p. 16; Ziegenbein, p. 19; Beckel, p. 21; Knoble, p. 30; Hinch, p. 33; Emerich, 17.)

But was it necessary he should thus keep them in pay instead of discharging them until wanted, or hiring others in their stead? It is proved by several witnesses that if he had discharged his workmen their places could not have been supplied at Fort Washita, as there were no workmen in that remote military station; nor could he have procured them nearer than the city of Fort Smith, and probably not there. He was thus compelled to keep those he first employed, or to give up his contract and violate his obligations.

He was also compelled to borrow large sums of money to make payments to his men, and to bear the other expenses incident to their employment, at heavy interest. He was unable to repay those sums when they became due, and thereby suffered in his credit, which to a business man is his life-blood. The rate of interest varied from ten to twelve per cent.

During the whole period ensuing the eight months embraced in his contract, up to 27th April, 1857, he was prevented from engaging in other work, in which he could have had constant and profitable employment. (See Ziegenbein, p. 18; Beckel, p. 21; Atkinson, p. 11, and other witnesses.)

But he not only suffered from these heavy expenses and losses to which he should not have been subjected, but even after the work was completed and approved, and his account passed, he was then kept out of his pay from 31st December, 1856, till 27th April, 1857, nearly four months; during which time he visited Fort Washita several times, and was delayed at heavy expense before he received it.

These various items of claim Geiger has united in an account, to

which he has made solemn oath, and has supported by ample proof.
(See page 7.)

1st item. Loss of time, 5 months, 13 hands—		
5, at \$65 per month.....	\$1,625	
8, at \$39 per month.....	1,560	
	<hr/>	\$3,185
2d item. Loss of 3 months, 13 hands—		
5, at \$65 per month.....	975	
8, at \$39 per month.....	936	
Travel, 13 men, 180 miles, 5 days each trip, at \$2 per day each; \$20 each man going and returning, \$260 each trip; 3 trips.....	780	
	<hr/>	2,691
3d item. Interest for borrowed money forced on claimant by failure of U. S.....		450
4th item. Expenses of his own travel, and while waiting for his money.....		230
5th item. Loss of time and other work for one year and ten months.....		1,000
6th item. Board of hands and self for 5 months, at \$25 each		1,750
		<hr/>
		9,306
		<hr/>

The court is respectfully referred to Story on Contracts, art. 969, 1021 a, 1022, 1022 c, 1029; Parson's on Contracts, vol. 2, 432, 442, 3, 4; Chitty on Contracts, p. 770, and the various cases referred to.

J. M. McALLA,
Attorney for Claimant.

IN THE COURT OF CLAIMS.

No. 1565.

WILLIAM GEIGER *vs.* THE UNITED STATES.

BRIEF OF DEPUTY SOLICITOR.

Statement of the case.

The plaintiff contracted to burn lime, quarry stone, and do the mason-work of a stone barrack at Fort Washita, in the Cherokee Nation. The United States were to haul the stone and lime from the places where the same were burned and quarried to the site of the work, and were also to furnish brick for certain parts of the work. All this work was to be finished by the 30th of June, 1855.

The plaintiff was also to furnish lime, and to plaster inside.

It was implied in this agreement that the United States would be ready from time to time with such carpenters' work as necessarily must keep pace with the stone-work.

The work was suspended on several occasions, respecting which there is much discrepancy in the testimony, but according to Knoble, who was foreman of the work, (Record, p. 29,) and who is most exact in his answers, the delays were as follows:

In March, 1855, three days waiting for stone to be hauled.

From June 30th to September 12, 1855, waiting for carpenters' work.

In October, 1855, four days waiting for stone to be hauled.

From October 28 to November 21, 1855, waiting for carpenters' work.

From June 30 to September 30, 1856, waiting for lathing nails.

After each suspension the petitioner recommenced work, and finally completed the building about the middle of December, 1856.

The petitioner alleges that he kept a large force of men under pay during these suspensions, and claims to be reimbursed. He alleges also that he was put to great expense and loss of time in collecting the amount due him from the United States, and claims to be reimbursed.

The particulars of his claim are stated by him under oath, (in the record, page 7,) and may be classed as follows:

Wages and support of men, \$3,185 + \$2,691 + \$1,750.....	\$7,626
Loss of business while idle during suspension.....	1,000
Interest on borrowed money	450
Expenses of going to Fort Washita to collect amount due....	230
	<hr/>
In all.....	9,360
	<hr/>

I. Several items of the claim are such as cannot enter into the estimate of damages; others are grossly overstated.

The last two items it is needless to remark upon. They do not arise from any breach of the contract by the United States, and have nothing to do with the contract.

He charges for the support of his men when idle, eight months. (Record, p. 7, and Brief, p. 3.) His foreman, Knoble, who worked from first to last, swears the work was suspended only five whole months and forty-two days—say six months and twelve days, besides suspensions from inclemency of the weather, and for want of mortar, boards, and scaffolding, with which the United States had no concern. Knoble cannot be mistaken in this, for he verifies it by further proving the time during which he worked.

He has charged wages of some hands at \$65 per month, and none less than \$39; yet Hinch (Record, p. 33) says his wages were only \$20 per month.

He has charged full wages during all the suspensions. Ziegenbein (Record, p. 32, 4th ans.) says Geiger did not pay him wages during the suspensions, and Hinch says that during part of the time he was

engaged in loading wagons and quarrying rock—*i. e.* as to him the work was not suspended at all. Again, during the suspensions of three days in March and four days in October, waiting for stone to be hauled, Geiger's men, or some of them, were, as Hinch was, employed in loading the wagons, (Ziegenbein's answer to 4th cross-interrogatory, Record, p. 32,) and for this service Geiger was paid, (Record, pp. 6. 44.) He cannot charge for time lost by these men thus employed.

He charges for the entire eight months for the pay and expenses of thirteen men. Vernon (7th ans., Record, p. 27) says that during one of the suspensions, Geiger had but nine men employed. It is true, the evidence is that he had more hands on an average employed on the building. This may be so, and yet he may not have had as many as thirteen on an average idle during the suspensions.

II. *All the delay was not chargeable to the default of the government ; a portion was incident to the nature of the work, and the government had a right to take time to execute its part.*

It would be impossible in constructing any building that the mason-work should go forward without interruption. Masons must stop while carpenters lay and level the joists, and set door and window-frames in each story. No doubt there was some unusual delay at each of the two stories, but some delay was unavoidable, and the government was not in default for the whole time.

This remark particularly applies to the delay from June 30 to September 12, 1856, when Knoble says they were waiting for lathing nails. After the completion of the mason-work, a considerable time is required to get ready for plastering. The roof is to be put on, the floors laid, and the rooms divided off by stud partitions, with the necessary doorways. This portion of the work consumes always a large amount of time—often a fifth of the whole time.

Supposing the largest force of mechanics that could be employed to advantage to be engaged in constructing a building, it would be far within bounds to say that the carpenters must have exclusive possession one-fourth of the time, and the masons and plasterers three-fourths.

But Geiger does not in a single instance allow the government a moment of time to perform acts which necessarily required weeks and months. Whenever the carpenters exclude him, he charges the lost time against the United States. With almost the same propriety might we charge that all the time Geiger's masons were at work they hindered our carpenters from laying joists, putting on roofs, and making floors.

III. *The petitioner has incurred unnecessary and unreasonable expenses not consequent upon any breach of the contract by the United States, and cannot be suffered to make the government bear the consequences of his own folly.*

According to the allegations of the petition work was suspended on three several occasions. And he knew that the work would not be resumed for a considerable time in each case. It was unreasonable

and unnecessary to keep mechanics idle under pay for one, two, and three months at a time. It is said they were in the Indian country, and had he discharged his men he could not have replaced them ; but this is contradicted by the petition itself, which alleges that the men did return to their homes at Fort Smith, and there, too, they were continued under pay. No necessity is shown for continuing them under pay in the place where they were originally hired, (Fort Smith,) where they were hired, and where they could have been replaced if discharged.

But under the terms of the contract itself the government is not liable for any delay between the completion of the mason-work and the necessary preparation for plastering ; or, as it is stated in the testimony, while Geiger was waiting for lathing nails. The agreement for plastering was a distinct contract from that to lay stone. By that agreement Geiger undertook to plaster the house when it should be ready. There was no covenant on the part of the United States to get it ready by a specified time. No time is even referred to. There is no reason arising out of the contract why Geiger's masons who built the walls should stand by idle while the government was preparing the house to be plastered. This part of the contract must be viewed just as if the government had contracted with any other party to plaster the house when ready. The government was bound to notify the contractor when the house was ready, and the contractor was not bound to move till so notified. This is the doctrine of the text books.

IV. The petitioner has, by his own acts, waived any cause of action against the United States on account of the delays alleged in the petition.

When the several suspensions of work for want of lumber took place, Geiger was informed, as nearly as could be, when he would be required to resume. (Rec., p. 38.) He made no complaint of the delay, and when the work was ready he resumed. The question has been particularly propounded to all the government officers to whom complaint should have been made, (Record, p. 36,) and no one reports any complaint from him. If dissatisfied with the delay, he should have notified the government officer ; not having done so, and having accepted the performance of its part by the government, he cannot maintain an action now for breach of covenant. (*Carpenter vs. Blandford*, 3 Man. and R., 93 ; *Baldwin vs. Farnsworth*, 10 Maine, 414 See as to enlargement of time by parol, *Watmough vs. Hodges*, 6 Harris and J., 38 ; *Cox vs. Bennett*, 1 Greene, 167 ; *Keating vs. Price*, 1 John. Ca., 22 ; *Ratcliffe vs. Pemberton*, 1 Esp., Ca., 34.)

The only authority to sustain this action which I can find, is in Story on Contracts, § 15, in which he says, that where the labor or expense of doing work is enhanced by acts of negligence or omission of either party, an implied promise of indemnity arises ; but in the cases cited for this doctrine, I find none to support it, except a slight remark in *Damon vs. Granby*, 2 Pick., 345.

V. *Character of the allegations and evidence.*

The evidence in this case fails, in a marked degree, to support the allegations of the petition, and the witnesses, to a singular extent, differ among themselves.

The petition alleges a total delay of eight months; Vernon, the architect, (pp. 14, 26,) makes, at a maximum, $7\frac{1}{2}$ months; Ziegenbein (p. 18) makes 5 months; Atkinson, who worked on the building and was an eye-witness of nearly every transaction, (p. 10,) knows only of $2\frac{1}{2}$ months' delay.

The same difference exists with regard to the times of suspension. Vernon, the superintendent of the building, employed by the government, was examined for the petitioner; Knoble, foreman of the masons, employed by petitioner, was examined for the defence.

Vernon says Geiger was delayed all September, 1855. Knoble says he himself worked from the 12th of September through that month. Vernon states as part of the delays a period from the last of December, 1855, to February 20, 1856. Knoble says he worked all this time except, perhaps, 14 days. Knoble states a delay from October 28 to November 21, 1855, which Vernon does not mention.

The allegation in the petition, that Geiger returned to Fort Smith with fourteen men, under wages, three several times, is disproved by the testimony. (Vernon's dep., p. 27, answers 4, 7, 10; Knoble, p. 29, answer 3; Ziegenbein, p. 31, answer 3; Hinch, p. 33, answer 3.)

The stone work was to have been completed June 30, 1855, but was not completed till June 30, 1856. In this whole year the period of delays charged are only five months, and not more than three months are proved, including the time necessarily occupied in laying joists, &c. The contractor thus had twice as much additional time given him as would cover all delays.

JNO. D. McPHERSON,
Deputy Solicitor.

IN THE COURT OF CLAIMS.

WILLIAM GEIGER *vs.* THE UNITED STATES.

LORING, J. delivered the opinion of the court.

In this case the petitioner alleges a contract made at Fort Smith, in Arkansas, on the 18th day of October, 1854, between him and the United States for the stone work of a barrack at Fort Washita, Choctaw Nation. By the contract the petitioner was to quarry the stone, and burn the lime, and lay the foundation, and erect the stone work, and plaster the walls and ceilings on or before the 30th of June, 1855. The United States were to haul the materials, such as stone, lime, sand, &c., from their place of preparation, near the building, to its site.

The work contracted for by the petitioner was completed and ac-

cepted by the United States December, 1856, and the contract price for the work has been paid by them:

But the petitioner alleges that he was delayed in the performance of his work by the repeated and protracted delays on the part of the United States in the hauling of materials and in the doing of the carpenter's work of the building; that these delays amounted in all to about eight months, during which he was obliged to support and pay his workmen, and to transport them to and from, between Fort Smith and Fort Washita, as it was impossible to dismiss them and to supply their places in that remote and unsettled country.

The petitioner also alleges that after the United States had accepted his work, they delayed the payment of the contract price for several months, whereby he was compelled to pay interest for money wherewith to pay his workmen, and was put to expense in endeavoring to collect the money due him, and became embarrassed in his affairs and was injured in his credit and business.

It is objected to this claim that the petitioner did not complain of the delays, when they took place, to the officers of the United States at Fort Washita, and that thereby and by subsequently receiving the contract price he has waived any cause of action he might have had against the United States.

But we think no such inference can arise between the parties. Neither the officers at Washita nor any other officers of the United States were their agents to take notice of such complaints or of a claim for damages, or of a demand therefor, and no notice to, or demand on, such officers would have altered the rights or liabilities of the United States, or been of any legal effect whatever. Then as to the receipt of the contract price, all payments by the United States are made on appropriations authorized by law, and there was no legal authority for the payment of anything more than the contract price, and the receipt of that cannot be held to be a waiver of a claim for damages which there was no existent judicial authority to adjust or pay, and the payment of which depended on future legislation.

Suspensions of the stone work, because of delays on the part of the United States, are proved by witnesses twice examined in the case; first by their depositions taken on the part of the petitioner, and again by their depositions taken on the part of the United States. Of these deponents, Knoble, who was foreman of the petitioner, and Vernon, who superintended the work for the United States, fix the dates and duration of the delays with great precision; and it is apparent, though not expressly stated, that Knoble kept a memorandum of his days' work, and testifies from it, for he states all their dates confidently. His testimony is given with apparent fairness, and he is justly credited by the deputy solicitor of the United States as being the most reliable witness.

On page 30 of the record, after having specified the suspensions that took place in Geiger's work from the delays and omissions of the United States, he states: "During the rest of the time I was at work, with the exception of four days, when I was sick, which Mr. Geiger did not pay me for." He then gives a tabular statement of his work: "I worked from the 14th November, 1854, to the 15th March, 1855; from the 19th March, 1855, to the 30th June, 1855; from the 12th

September, 1855, to the 5th October, 1855; from the 9th October, 1855, to the 28th October, 1855; from the 21st November, 1855, to the 30th June, 1856; from the 30th September, 1856, to the 15th December, 1856." And with this specific statement of dates his testimony of the suspension of the work from the delays of the United States corresponds.

The whole evidence shows that there were two suspensions of the work from the delay of the United States in hauling stone; two suspensions "for want of carpenter's work," and one "for want of lathing nails;" the duration of each is fixed as follows: For delay in hauling stone, &c., first time in March, 1854, 3 days; second time in October, 1855, 4 days.

Of these Knoble says, (p. 29,) answer 2d: "There were twice that the work was suspended for want of having the rock and lime hauled to the place of building; *first time in March, 1855, about three days.*"

Vernon says, p. 26: "When I arrived at Fort Washita, I saw Mr. Geiger, who had several hands in his employ all idle, and it was some three days before they were able to get at work, on account of the rock and lime not being hauled; the same being about two miles from said garrison."

Of the second suspension for want of rock and lime, Knoble, says, answer 2d: "*Second time, in October, 1855, four days for want of rock.*"

Vernon does not mention this second delay of four days, but (p. 27) refers to a suspension for the same cause from about the last of December, 1855, to 20th February, 1856, but his recollection is impugned in this particular by the statistical statement of Knoble.

The testimony proves two suspensions from delay in the carpenter's work, thus: First time from June 30, 1855, to September 12, 1855; second time from October 28, 1855, to November 21, 1855.

Of the first Knoble says, answer 2d, p. 21: "The work was suspended for want of carpenter's work twice, the first time from June 30, 1855, to September 12, 1855.

Vernon says, answer 2d, p. 27: "The petitioner was obliged to suspend work a second time for the space of two months or more on account of there not being joist and other timbers necessary on hand, as also bricks for pillars and chimneys. This suspension was, as well as I can recollect, in July, 1855, and until about the middle or last of September."

As to the second suspension from delay in the carpenter's work, Knoble, p. 29, answer 2d, states: "*second time from October 28, 1855, to November 21, 1855.*"

Vernon omits this suspension, but Ziegenbein and Hinch testify to two suspensions for delay in the carpenter's work, though they testify differently and without confidence as to dates.

As to the suspension of the work of the petitioner because lathing nails were not furnished, Knoble, answer 6th, p. 30, states: "In addition to the time lost in consequence of the suspension of the work, as above stated, there was from the last of June, 1856, to the last of September of the same year a suspension of time on account of not having nails for lathing:" and his statement of the dates of his work

shows that this suspension was from the 30th of June to the 30th of September ; and that it was the last suspension.

Vernon says as to this, when asked "if the petitioner was obliged to suspend work a fourth time, for the space of three or four months, by the failure of the United States to perform some act which they ought to have performed, p. 28 :

Answer (8.) Yes ; the work was suspended on or about the 1st of July, 1856, for the want of lathing nails, which the government was to furnish.

Ziegenbein testifies to a suspension "on account of there being no lathing nails on hand," though he mistakes the date as "in the spring of 1856."

Ziegenbein, answer 6, p. 32, testifies : "In the winter of 1855-'56 Geiger and all of the hands stopped work on account of the inclemency of the weather," but this is shown to be incorrect by Knoble's statement of dates of suspensions.

On the whole evidence, therefore, we find the suspensions of Geiger's work, caused by the delays of the United States, amounted to six months and a half.

The United States allege that in the construction of a building there must be necessarily some delay from the necessary interference of workmen with each other, as carpenters with masons ; that this is unavoidable, and that the government therefore could not have been in default the whole time, and that Geiger has charged the whole time as the default of the government.

And these considerations are applied by the deputy solicitor particularly to the time when it is said that the work was delayed for lathing nails, as "after the completion of the mason work a considerable time is required to get ready for plastering," (Sol. br., § III, p. 2,) and it is said the carpenters must have exclusive possession one-fourth of the time.

This is suggestion, and not evidence, and facts that are relied upon or are to be used, must be proved by evidence ; when they are not so proved, the want of evidence is to bear most strongly against the party which should have produced it, which in this case is the United States. Moreover, the testimony is that the delay as to lathing nails was for the want of them, and not while they were used. But for unavoidable interference and delays, some time should be allowed, and we think one month is, under the circumstances of the nature of the building, &c., sufficient ; this reduces the time to five months and a half.

It is also urged by the United States that the contract for plastering was a separate contract from the stone work, and that Geiger had no right to keep his men at the expense of the government from the time the stone work was done till the plastering was ready. We think this is not so, and that from the situation of the parties, and from the contract itself, it is the inevitable conclusion that they considered the agreement for stone work and plastering parts of the same contract, and that the latter would not have been made except jointly with the other ; there is no evidence that the whole lathing must have been finished before the plastering began, nor ground for

inferring it ; or that the time between when the stone work was completed and the lathing was ready for the beginning of the plastering was necessarily such as to require the dismissal of the men in that country, and under the circumstances shown in the case.

It is said also that there was no covenant on the part of the United States to get ready for the plastering in any specified time, but we think this is not so ; a time was fixed by the contract for the completion of the work, and a covenant on the part of the United States to do what was to follow the stone work and precede the plastering, *within a reasonable time*, was an implication of law.

Then the petitioner charges for thirteen men under wages during these suspensions. B. F. Atkinson, 2 answer., p. 11, states " that the said Geiger had in his employment in the erection of said barracks at Fort Washita thirteen men." Thomas Vernon, answer 2, p. 15, states " that said Geiger had thirteen men employed on said barracks."

Jacob Ziegenbein, answer 2d, p. 17, states " that William Geiger had employed on said work thirteen or fourteen hands on an average ; he sometimes had as many as twenty men employed on it."

George Hinch, p. 34, 4th interrogatory, being asked how many hands did Mr. Geiger have employed to work on the building, said : Answer. From twelve to fifteen.

But it appears from Ziegenbein's testimony that he left the work on the 7th or 8th of November, 1854, and remained absent until about the 10th of September, 1855. And it appears from Hinch's testimony that he left the service of the petitioner and entered the service of the United States on the third suspension of the work, which was October 5th, 1855. And then it appears that during the first and second suspensions he was at work " engaged in helping the teamsters load the rock at the quarry." This was done under the " additional agreement made November 1st, 1854," p. 6, and was payable under it at 25 cents per perch, and apart from the contract for laying stone, &c., and it has no connexion with the suspension alleged ; and as to Hinch there was no suspension.

There are, therefore, only twelve men for whose wages the petitioner can claim.

As to the rates of the wages : The petitioner charges, p. 7, " five of said men at \$65 per month, and eight of said men at \$39 per month ;" but the testimony in the case does not support the charge of " five of said men at \$65 per month."

Knoble testifies, ans. 4, p. 30, " my wages was three dollars per day."

Hinch testifies, ans. 4, p. 33, " Geiger paid me \$20 per month."

B. F. Atkinson, ans. 2, p. 11, states, " thirteen men ; their wages per day was two dollars each "

Thomas Vernon, ans. 2, p. 14, says " Geiger had thirteen men at the expense of two dollars per day wages."

Ziegenbein, ans. 2, p. 17, says the men were employed " at wages of two dollars per day."

And this is all the testimony as to the rate of wages. For eight men the petitioner, according to his own statement, can claim but \$39

per month, and if Hinch is excluded and Knoble taken at \$3 per day according to his testimony, there remain two men to be charged at the rate of two dollars per day, of whom Zeigenbein is one.	
Then eight men, at \$39 per month, for 5½ months, is.....	\$1,616
Knoble, at \$3 per day, for 5½ months.....	495
One man, at \$2 per day, for 5½ months.....	330
Ziegenbein, after he returned to work, about September 10, there were 116 days, of suspension, deduct 19 days, as the proportion within a fraction of the unavoidable delays, and there remain 97 days, at \$2 per day.....	194
Total wages.....	<u>\$2,635</u>

As to the expense of board, Atkinson, Vernon, and Ziegenbein, in answer to the 2d interrogatory in their depositions taken for the plaintiff, state the expenses of boarding at the rate of from twenty to twenty-five dollars per man. But in answer to the 6th interrogatory in the same depositions, Atkinson and Ziegenbein state the expense as at from twenty-five to thirty dollars per month; but Vernon, in his 6th answer, says, (p. 11,) "the expense of subsistence at Fort Washita, between October, A. D. 1854, and November, 1856, was, by boarding, say (15) fifteen dollars per month per man, and by purchasing supplies and furnishing one's self, from fifteen to twenty-five dollars per man."

But it appears from Knoble's testimony that board at Fort Smith, 170 or 180 miles from Fort Washita, was about twelve dollars per month, (ans. 4th, p. 30;) and the evidence shows, p. 6, that Geiger was authorized to draw ten rations per day for his men at the government prices, and therefore it is reasonable to take the lowest statement of his own witnesses, and that is the specific statement of Vernon in his 6th answer cited above, fixing the rate of board at fifteen dollars per month for each man.

As Geiger's own board is to be included, there are twelve men, at \$15 per month, for five and a half months.....	\$990 00
Hinch, for two months and eighteen days.....	39 00
Ziegenbein, for three months and seven days.....	48 50
	<u>\$1,077 50</u>

Mr. Geiger is entitled to be paid also for his own time during the suspensions, and at \$3 per day.....	<u>\$495 00</u>
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Upon the preceding calculations the petitioner would be entitled to receive for expenses and damages:

For wages paid his men.....	\$2,635 00
For board of men and himself.....	1,077 50
For his own time.....	495 00
	<u>\$4,207 50</u>

The United States allege that during the time of the suspensions some of Geiger's men were employed in loading stone, (Ziegenbein's deposition, 4th cross-interrogatory, p. 32,) and that Geiger has been paid for that, (pp. 41, 44, and 45.) It is not shown how many men were so employed, nor for what time any were, but it is evident Geiger is not to be paid for the time of his men twice during the suspensions. Now the record (p. 44) shows that Geiger was paid for hauling stone \$540 44, from January 14, 1856, to September 30, 1856, the term of 252 days. During that time there were 92 days of suspensions, and if a proportional part of the payment is deducted, it reduces the amount due Geiger by \$196 88.

It is not shown that Geiger received any more for loading stone, except the \$4 50 specified in p. 41, and it does not appear that that was secured during any suspension.

If from the amount found due to him above (\$4,207 50) there is deducted \$196 88, there remains a balance due him of \$4,010 62, and to that amount he is entitled to relief.

The petitioner claims the expenses of transporting his men to and from Fort Smith. The necessity of this is not shown by the evidence, and Vernon states his expenses were not greater thereby than if he had remained at Fort Washita; and, if they were, he had no right to incur them. He was bound to support his men in the cheapest way during the suspensions, and cannot claim for more.

The petitioner claims also his own expenses in travelling to and remaining at Washita, while seeking payment of his money, after his work was accepted. But this is not a consequence of the breach of contract declared for, but a remote consequence of the default of the United States, for which there is no legal liability.

The claim for interest cannot be allowed.

A bill will be reported to Congress for (\$4,010 62) four thousand and ten dollars and sixty-two cents.

Report of Quartermaster G. P. Andrews.

BENICIA DEPOT, *California*, July 17, 1858.

SIR: Your communication dated May 21, 1858, was received on the 1st int., but could not be answered by the return mail, because it was necessary first for me to visit the Presidio of San Francisco, and examine the copy of Wm. Geiger's contract, which is in possession of B't. Capt. Lendrum.

I have now the honor to report as follows: The narrative prefacing the questions by the Solicitor of the Court of Claims, states that "The United States were to do all the carpenter's work and to haul stone and lime and other materials." My recollection is, that the contract did not at first provide for any *hauling*. The word used was "*furnish*," and the first dispute between Geiger and myself occurred when he claimed that I should haul the stone that he had quarried. This

was about December 25th, 1854. Geiger then rode from Fort Washita to Fort Smith, about 185 miles, saw Quartermaster French, and obtained an additional explanatory article, which is on the third page of his contract, declaring that the United States should do all the hauling. He was gone about two weeks, during which time his men could have continued to quarry stone, and my impression is that they did; for they had not quarried enough to make the entire walls of the building.

Afterwards we had another dispute about loading the wagons, which was arranged by my agreeing to pay him for loading them so much per perch, (see contract.) I think that agreement was ante dated for some reason that I have forgotten. This second dispute caused a delay of two days in hauling, during which his men could have continued their work.

I was relieved from duty as A. A. Q. M. at Fort Washita, on the 28th of February, 1855. At that time, Geiger had not laid the foundations, and consequently could not have been delayed for any carpenter's work. After I was relieved I took no further notice of the progress of the work than any other indifferent person. My memoranda and retained accounts were deposited for safety at my home, before I returned to California, and I am unable, without reference to them, to make any further statement than the above, which is to the best of my recollection. I judge, from my knowledge of Geiger's disposition, that he would not have presented such an improbable claim, had he not been aware of the resignation of Capt. French, and that the other persons who had anything to do with that contract have been stationed at such remote posts as to make it possible for the claim to be adjudicated without their evidence. Three years and three months have elapsed since I was relieved, and he has never hinted to me that my evidence might be needed in his favor.

Very respectfully, your obedient servant.

GEO. P. ANDREWS,

Regimental Quartermaster 3d Artillery.

Major General THOS. S. JESUP,
Quartermaster General U. S. A.

A true copy from the original on file in the Quartermaster General's office.

W. H. GORDON, *Chief Clerk.*

Copies of bills of Wm. Geiger paid.

<i>The United States to William Geiger,</i>	<i>Dr.</i>
June, 1855—For 89 feet of chimney on old quarters, (officers) at \$4 per foot.....	\$356 00
184 feet cut stone for fire-places in officers' quarters, at \$75 per foot.....	137 60
Repairing old fire-places, in commanding officer's quarters, moving columns under commanding officer's quarters.....	21 00
	<hr/>
	\$514 60
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I certify that the above account is correct, and that the work was performed as above stated, and necessary for the public service.

J. H. LENDRUM,

Brevet Captain United States army, Acting Quartermaster.

A true copy from the original.

W. H. GORDON,

Chief Clerk Quartermaster General's office.

Received, Fort Washita, C. N., June 24, 1855, of Breveet Captain J. H. Lendrum, acting assistant quartermaster United States army, five hundred and fourteen dollars and sixty cents, in full of the above account.

WILLIAM GEIGER.

The United States to William Geiger,

Dr.

Jan. 14, 1856—For building 463 perch stone walls, at	
\$3.25 per perch.....	\$1,504 75
	<hr/>

I certify on honor that the above account is correct and just; that the services were rendered as stated, and that they were necessary for the public service.

J. H. LENDRUM,

Brevet Captain United States army.

Received, Fort Washita, C. N., January 14, 1856, of Brevet Captain J. H. Lendrum, 3d artillery acting assistant quartermaster United States army, fifteen hundred and four dollars and seventy-five cents, in full of the above account.

WILLIAM GEIGER.

A true copy from the original.

W. H. GORDON,

Chief Clerk Quartermaster General's office.

The United States to William Geiger,

Dr.

Nov. 25, 1856—To cutting 355 feet stone steps, at 75 cents	
per foot.....	\$266 25
Laying 18 perch stone, at \$3 25 per perch,	58 50
Loading 18 perch stone, at 25 cents per	
perch.....	4 50
	<hr/>
	\$329 25
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I certify that the above account is correct and just, and that the services were rendered as stated, and that the account has never been paid.

D. P. HANCOCK,

2d Lieutenant 7th Infantry, Acting Assistant Quartermaster.

Received, Fort Washita, C. N., April 27th, 1857, of 2d Lieutenant D. P. Hancock, 7th infantry, acting assistant quartermaster, the sum of three hundred and twenty-nine dollars and twenty-five cents, in full on the above account.

WILLIAM GEIGER.

A true copy of the original.

W. H. GORDON,
Chief Clerk Quartermaster General's office.

The United States to William Geiger.

Dr.

March 10, 1855—For building thirty-one perches of stone wall, at \$3 25, under contract of October 18, 1854, for erecting the walls for soldiers' barracks at Fort Washita, C. N..... \$100 75

I certify that the account is correct; that the work has been performed as charged and correct.

J. H. LENDRUM.
Brevet Captain U. S. A., A. A. Q. M.

Received, Fort Smith, Arkansas, March 10, 1855, of Capt. S. G. French, assistant quartermaster United States army, one hundred dollars and seventy-five cents, in full of the above account.

WILLIAM GEIGER.

A true copy from the original.

W. H. GORDON.
Chief Clerk Q. M. G. office.

Credited to Lendrum on his explanation.

The United States to William Geiger.

Dr.

December 31, 1855—For building 246 perches of stone wall, at \$3 25 per perch..... \$799 50

I certify on honor that the above account is correct and just; that the services were rendered as stated; and that they were necessary for the public service.

J. H. LENDRUM,
Brevet Captain U. S.

Received, Fort Washita, C. N., December 31, 1855, of Brevet Captain J. H. Lendrum, acting assistant quartermaster United States army, seven hundred and ninety-nine dollars and fifty cents, in full of the above account.

WILLIAM GEIGER.

A true copy from the original.

W. H. GORDON,
Chief Clerk Q. M. G. office.

The United States to William Geiger.

Dr.

August 30, 1855—For ninety-two and one-third perches of
stone wall, at \$3 25 per perch..... \$300 00

I certify on honor that the above is correct and just; that the services were rendered as stated; and that they were necessary for the public service.

J. H. LENDRUM,
Brevet Captain U. S. A., A. A. Q. M.

Received, Fort Washita, C. N., August 30, 1855, of Captain J. H. Lendrum, acting assistant quartermaster United States army, three hundred dollars in full of the above account.

WILLIAM GEIGER.

A true copy from the original.

W. H. GORDON.
Chief Clerk Q. M. G. office.

The United States to William Geiger.

Dr.

May, 1855—For building thirty-two perches stone wall on
barracks, at \$3 25 per perch, per contract of Oc-
tober 18, 1854..... \$104 00

I certify that the above account is correct; and that the wall, as above stated, has been erected in pursuance of contract.

J. H. LENDRUM.
Brevet Captain U. S. A., A. A. Q. M.

Received, Fort Washita, C. N., April 17, 1855, of Brevet Captain Lendrum, 3d artillery, acting assistant quartermaster United States army, one hundred and four dollars, in full of the above account.

WILLIAM GEIGER.

A true copy from the original.

W. H. GORDON.
Chief Clerk Q. M. G. office.

The United States to William Geiger.

Dr.

April 25, 1855—For building five hundred and fifty-five
perches of stone wall on soldiers' barracks,
at Fort Washita, C. N., at \$3 25 per perch, \$1,803 75

I certify that the above account is correct; and that the wall has been erected; and that the account is correct and just.

J. H. LENDRUM,
Brevet Captain U. S. A., A. A. Q. M.

Received, Fort Washita, C. N., April 25, 1855, of Brevet Captain Lendrum, 3d artillery, acting assistant quartermaster United States

army, eighteen hundred and three dollars and seventy-five cents, in full of the above account.

WILLIAM GEIGER.

A true copy from the original.

W. H. GORDON,
Chief Clerk Q. M. G. office.

The United States to William Geiger, from 14th January 1856, to 30th of September, 1856, Dr.

For 856 perches 13 feet masonry, at \$3 25 per perch,.....	\$2,784 56
For 2,161 perches 12 feet loading, at 25 cents per perch,	540 44
For 1,931½ feet of cut stone, at 75 cents per perch foot,...	1,448 43
For labor 20 days, at \$2 50 per day,.....	50 00
For services for team and teamster, 43 days, at \$3,.....	129 00
For 963 yards plastering, at 35 cents per yard,.....	337 05
For excavation per agreement,.....	155 00
For 7 feet chimney, at \$4 per foot,.....	28 00
For delivering 57 perches of stone, at \$1 per perch,.....	57 00
For repairing chimneys, fire-places, steps, &c.,.....	106 00
	<hr/>
	5,635 48
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I certify that the above account is correct and just, and the work was executed and services rendered in compliance with agreement made with Capt. S. G. French, assistant quartermaster, on the 18th of October, 1854, and subsequent agreement with Brevet Major G. P. Andrews, third artillery, acting assistant quartermaster, and myself.

J. H. LENDRUM,
Brevet Captain United States Army.

Received, Fort Washita, Choctaw Nation, April 27, 1857, of second Lieut. D. P. Hancock, 7th infantry, acting assistant quartermaster, the sum of five thousand six hundred and thirty-five dollars and forty-eight cents, in full on the above account.

WM. GEIGER.

A true copy from the original.

W. H. GORDON,
Chief Clerk Quartermaster General's office.